APPENDIX

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 16, 2026
Lyle W. Cayce
Clerk

No. 25-40032

Madelyn Marina Quiroz; Marina Naomi Hernandez Quiroz,

Plaintiffs—Appellants,

versus

Eduardo Hernandez; City of Dayton; Theo Melancon, *City of Dayton, City Manager*; Dickenson City Manager; Robert Vine, *Dayton City Police Chief*; John D. Coleman, *Dayton City Police Captain*; Terri Hughes, *Criminal Investigation Division Lieutenant, Dayton City*; Caroline Wedzeck; Kristen Seibert; City of Dayton Fire Department; Murphy Green; Jennifer Bergman Harkness, *Liberty County District Attorney*; Matthew Poston, *Liberty County Attorney*; Matthew Saldana; City of Liberty, Texas; Katelyn Grimes; Allegiance Mobile Health Medical Service; Steve Smith; Ramji Law Group; Jamey Wayne Bice, *also known as* Jaime Bice, *also known as* James Bice, *also known as* Jamey Bice; Stephanie Lee Blum Bice; Morgan Skye White; Union Pacific Railroad Company; Adam Ramji,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:23-CV-273

ON PETITION FOR REHEARING

Before SOUTHWICK, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 12, 2026
Lyle W. Cayce
Clerk

No. 25-40032

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ,

Plaintiffs—Appellants,

versus

EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, *City of Dayton, City Manager*; DICKENSON CITY MANAGER; ROBERT VINE, *Dayton City Police Chief*; JOHN D. COLEMAN, *Dayton City Police Captain*; TERRI HUGHES, *Criminal Investigation Division Lieutenant, Dayton City*; CAROLINE WEDZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, *Liberty County District Attorney*; MATTHEW POSTON, *Liberty County Attorney*; MATTHEW SALDANA; CITY OF LIBERTY, TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; RAMJI LAW GROUP; JAMEY WAYNE BICE, *also known as* JAIME BICE, *also known as* JAMES BICE, *also known as* JAMEY BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY; ADAM RAMJI,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:23-CV-273

JUDGMENT ON PETITION FOR REHEARING

Before SOUTHWICK, HIGGINSON, and DOUGLAS, *Circuit Judges*.

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED. We AFFIRM the district court's judgment, with the exception of the dismissal of the Liberty County Defendants, whose dismissal we modify to be without prejudice.

IT IS FURTHER ORDERED that appellants pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

Certified as a true copy and issued as the mandate on Mar 23, 2026

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 31, 2025
Lyle W. Cayce
Clerk

No. 25-40032

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ,

Plaintiffs—Appellants,

versus

EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, *City of Dayton, City Manager*; DICKENSON CITY MANAGER; ROBERT VINE, *Dayton City Police Chief*; JOHN D. COLEMAN, *Dayton City Police Captain*; TERRI HUGHES, *Criminal Investigation Division Lieutenant, Dayton City*; CAROLINE WADZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, *Liberty County District Attorney*; MATTHEW POSTON, *Liberty County Attorney*; MATTHEW SALDANA; CITY OF LIBERTY, TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; JAMEY WAYNE BICE, *also known as* JAIME BICE, *also known as* JAMES BICE, *also known as* JAMEY BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY,

Defendants—Appellees.

Appeal from the United States District Court
Eastern District of Texas
USDC No. 1:23-CV-273

ON PETITION FOR REHEARING

Before SOUTHWICK, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:

The petition for rehearing is DENIED. We withdraw the prior opinion, reported at 163 F.4th 222 (5th Cir. 2025), and substitute the following.

This case arises out of a serious car accident involving the reckless driving of two teenagers. Appellant Madelyn Marina Quiroz and her mother Marina Naomi Hernandez Quiroz challenge the district court's dismissal of all of their claims against twenty-three named defendants.[1] The district court adopted the Magistrate Judge's report and recommendation and dismissed Appellants' claims against all defendants with prejudice, with the exception of Eduardo Hernandez, whose claims were dismissed without prejudice. The district court described the Second Corrected Amended Complaint (the "Operative Complaint") as "riddled with pleading deficiencies, difficult to decipher throughout, and replete with vague, conclusory allegations."[2] Nevertheless, the district court was able to discern multiple claims relating to the alleged negligence of first responders and private parties, as well as discrimination claims arising under 42 U.S.C. § 1983 against various city officials related to their handling of the post-accident investigation. Madelyn

[1] Defendant Nissan North America was voluntarily dismissed by the parties and was not named in this appeal.

[2] It is important to note that Madelyn and her mother are not proceeding pro se—they procured counsel prior to the filing of the Operative Complaint. Counsel entered an appearance representing the Appellants on November 9, 2023. The Second Amended Complaint was filed on November 20, 2023, and the "Second (Corrected) Amended Complaint," at issue here, was filed on November 21, 2023. Due to the "correction" made by Appellants, though it is titled as a "Second" Complaint, the Operative Complaint is functionally their third. The changes made in the Operative Complaint were not limited to scrivener's errors—Appellants instead made changes to the body of the Operative Complaint, including the descriptions of parties and the claims against them.

and her mother now appeal the ruling of the district court, arguing that they should be given a chance to replead for a fourth time to address these deficiencies. Additionally, they argue that the district court erred in its dismissal of all defendants. Having found no error or abuse of discretion, we AFFIRM.

I

On January 23, 2020, appellant Madelyn Quiroz, then just 16 years old, was a backseat passenger in a car driven by appellee Morgan White. Morgan was driving at a dangerous speed—around 86 to 96 miles per hour—on a roadway with a posted speed limit of 30 miles per hour. She was racing appellee Eduardo Hernandez, who was driving a separate vehicle. Morgan eventually lost control of her vehicle, launching it airborne approximately 10 to 15 feet over a ditch and landing on railroad tracks owned by appellee Union Pacific Railroad Company. Madelyn suffered serious injuries from the crash, including a broken back, a serious spinal cord injury, broken ribs, and internal bleeding. Due to these injuries, Madelyn is now a paraplegic, confined to a wheelchair and paralyzed from the chest down. Madelyn and her mother sued various city officials responsible for the immediate care given to Madelyn after the accident and the resulting crash investigation. They also brought claims against Eduardo, Morgan, and members of Morgan's family for their involvement in the crash.

II

Given the high number of defendants involved in this appeal, our court will analyze the distinct (although overlapping) claims brought against each of the twenty-three defendants. For the sake of brevity, we have grouped certain defendants to address all claims against them. We review the district court's dismissals for failure to state a claim de novo. *See Cody v. Allstate Fire & Cas. Ins.*, 19 F.4th 712, 714 (5th Cir. 2021). Likewise, we

review the district court's dismissal for lack of subject matter jurisdiction de novo. *Ghedi v. Mayorkas*, 16 F.4th 456, 463 (5th Cir. 2021).

A

Appellants first bring general § 1983 discrimination and negligence claims against appellees Allegiance Mobile Health, a private medical transport company, and one of its paramedics Steve Smith (the "Allegiance Defendants"). Appellants claim that the Allegiance Defendants discriminated against Madelyn and deprived her of "life liberty and property in the pursuit of happiness and also [] denied [her] equal protection of the law." This claim stems from an alleged argument between Smith and the City of Dayton Fire Chief, Murphy Green, regarding whether or not to medivac Madelyn from the scene of the accident. Appellants argue that this disagreement led to a significant delay in Madelyn receiving treatment for her injuries. Appellants further claim that Smith "withheld medical treatment and abandoned [Madelyn] . . . le[aving] a critical patient in the care of a much lower level [EMT]."

The district court characterized Appellants' claims against the Allegiance Defendants as vague and conclusory. Nevertheless, the district court discerned several possible claims against them: "a vague claim for discrimination, negligence, and violations of due process, equal protection, and the Fourth Amendment[3] pursuant to § 1983". We analyze each claim below.

1

[3] Because Appellants made no claim relating to the unlawful search or seizure of Madelyn's property or person, our court will construe their Fourth Amendment claim as a general § 1983 claim for discrimination. A claim of false arrest implicates guarantees of the Fourth and Fourteenth Amendments and, therefore, is actionable under § 1983. *See Sorenson v. Ferrie* 134 F.3d 325, 328 (5th Cir.1998).

Appellants argue that the district court erred in concluding that they failed to properly show that the Allegiance Defendants were state actors for the purposes of their § 1983 claims, and that any such claims would be time-barred. Additionally, Appellants claim that the district court erred in concluding that they failed to properly assert claims against the Allegiance Defendants. Having found no error, we affirm.

i.

Section 1983 requires state involvement before a cause of action can be asserted thereunder. *Ford v. Harris Cnty. Med. Soc.*, 535 F.2d 321, 323 (5th Cir. 1976). "Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Blum v. Yaretsky,* 457 U.S. 991, 1002 (1982)). Allegiance is a private emergency transport company. Smith, an employee of Allegiance, is a private citizen. He is not employed by the state of Texas, or by the federal government. Appellants argue that Allegiance, as a contractor for the City of Dayton, acted under color of law in undertaking a function intended by the city. Appellants have not cited to a case where our court has found a private company contracting with a municipality for any function similar to an ambulance service to be a state actor for the purposes of a § 1983 claim and we have not found one.[4] Further, as explained, *infra*, Appellants' § 1983 claim against the Allegiance Defendants fails on other grounds.

[4] In other contexts, the Supreme Court has held that contractors for the government are not state actors for tax purposes. *See United States v. New Mexico*, 455 U.S. 720 (1982). *See also United States v. Boyd*, 378 U.S. 39, 47 (1964) ("[w]e cannot conclude that [the contractors], both cost-plus contractors for profit, have been so incorporated into the government structure as to become instrumentalities of the [State].")

To adequately plead a discrimination claim under § 1983, a plaintiff must allege (1) that they were treated differently from a similarly situated individual of a different race, and (2) that the differential treatment was motivated by discriminatory intent. *See Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 412 (5th Cir. 2015) (citing *Priester v. Lowndes County*, 354 F.3d 414, 424 (5th Cir. 2004)). Appellants vaguely allude to Morgan White receiving different treatment but fail to allege any facts to support a claim that that the treatment was related to Madelyn's race. Therefore, Appellants fail to adequately allege any discriminatory intent on behalf of any of the Allegiance Defendants.

Under these facts, we hold that the district court properly concluded that the Allegiance Defendants were not state actors and that there was no evidence of discriminatory intent for the purposes of § 1983. Nevertheless, due to Appellants' inartful pleading, and out of fairness to Madelyn, we consider their timeliness arguments below.[5]

ii.

"Section 1983 does not prescribe a statute of limitations. Instead, the statute of limitations for a suit brought under § 1983 is determined by the general statute of limitations governing personal injuries in the forum state." *Heilman v. City of Beaumont*, 638 F. App'x 363, 366 (5th Cir. 2016) (quoting *Piotrowski v. City of Hous.*, 237 F.3d 567, 576 (5th Cir. 2001)) (citation

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Further, the Court has held that to be liable under § 1983, a private entity must be performing "powers traditionally exclusively reserved to the State." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (citation modified). "It is not enough that the federal, state, or local government exercised the function in the past, or still does." *Id.*

[5] Appellants also assert various tolling provisions, without jurisprudential support, throughout their Operative Complaint.

modified). In Texas, that statute of limitations period is two years.[6] TEX. CIV. PRAC. & REM. CODE § 16.003. "Just as we borrow the forum state's statute of limitations for § 1983 purposes, we borrow also the state's tolling principles." *Walker v. Epps*, 550 F.3d 407, 415 (5th Cir. 2008). In Texas, equitable tolling is applied "sparingly"—plaintiffs must be able to prove certain circumstances to allow for tolling to be applied. *Hand v. Stevens Transp., Inc. Emp. Benefit Plan*, 83 S.W.3d 286, 293 (Tex. App. 2002). Litigants cannot use the doctrine to "avoid the consequences of their own negligence." *Id*. Two exceptions recognized under Texas law operate to delay or toll the limitations period—the discovery rule and the doctrine of fraudulent concealment. *See Clouse v. S. Methodist Univ.*, No. 24-10461, 2025 WL 2427755, at *2 (5th Cir. 2025) (unpublished) (citing *Valdez v. Hollenbeck*, 465 S.W.3d 217, 229 (Tex. 2015)).

Madelyn and her mother filed their original complaint on July 17, 2023, one day before the two-year statute of limitations period expired. Appellants did not name the Allegiance Defendants in their original complaint. The Allegiance Defendants were not named as parties until Appellants filed their first amended complaint on October 12, 2023. In response to the magistrate judge's conclusion that their claims against the Allegiance Defendants were time-barred, Appellants argued that their claim against the Allegiance Defendants should relate back to the original complaint. Appellants made no specific argument for fraudulent concealment or the discovery rule. Nevertheless, the district court charitably considered whether either doctrine applies. We review its conclusions, beginning first with the discovery rule.

[6] Additionally, in Texas, the statute of limitations period for a negligence claim is also two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a); *Ledford v. Keen*, 9 F.4th 335, 338 (5th Cir. 2021).

"To begin, the discovery rule is a narrow exception reserved for exceptional cases and its applications should be few and narrowly drawn." *Clouse*, 2025 WL 2427755, at *4 (quoting *Berry v. Berry*, 646 S.W.3d 516, 524 (Tex. 2022) (citation modified). The rule is limited to circumstances in which a plaintiff's injury is "inherently undiscoverable; that is unlikely to be discovered within the prescribed limitations period despite the exercise of reasonable diligence." *Id.* (quoting *Marcus & Millichap Real Est. Inv. Servs. of Nev., Inc. v. Triex Tex. Holdings, LLC*, 659 S.W.3d 456, 461 (Tex. 2023) (citation modified). The inquiry is "not case-specific: the question is whether the type of injury alleged is the kind that could ordinarily be discovered through the exercise of reasonable diligence." *Id.* at *4.

Here, it is axiomatic that Madelyn's injuries were discoverable—they were the very basis of the suit originally filed in October of 2023. Further, Appellants failed to bring forth any notions that her injuries were undiscoverable in the Operative Complaint or in the instant appeal. Accordingly, the district court correctly concluded that the discovery rule does not apply here.

Under the doctrine of fraudulent concealment, "when a defendant has fraudulently concealed the facts forming the basis of the plaintiff's claim, [a statute of] limitations does not begin to run until the [plaintiff], using reasonable diligence, discovered or should have discovered the injury." *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 817 (Tex. 2021).

Appellants raise various vague and conclusory allegations in the Operative Complaint, accusing different appellees of deleting body camera footage, withholding medical records, failing to investigate certain leads, and altering and removing physical evidence found within the car involved in the accident. Although they make these claims generally in their complaint,

Appellants fail to bring forth specific allegations of fraudulent concealment as it relates to their untimely filing against the Allegiance Defendants. We therefore agree with the district court in concluding that the doctrine of fraudulent concealment does not apply.

2

On appeal, Appellants argue that an argument between Smith and appellee Murphy Green led to a ninety-minute delay in Madelyn receiving medical treatment. For the purposes of this opinion, we will construe this as a general claim for negligence against the Allegiance Defendants. Having determined that neither the doctrine of fraudulent concealment nor the discovery rule saves Appellants' § 1983 claims from being barred by Texas's statute of limitations, we turn to the doctrines of misnomer and misidentification.[7]

In response to the Allegiance Defendants' motion to dismiss, Appellants cite to the doctrines of misnomer and misidentification in support of their argument that their untimely claims should relate back to their original complaint. The district court disagreed, finding the doctrines of misnomer and misidentification inapplicable. On appeal, Appellants make the same argument. The crux of the Allegiance Defendants' opposition rests on the argument that Appellants fail to raise any facts that would relate their otherwise untimely claims back to the original complaint under the doctrines of misnomer and misidentification.

Federal Rule of Civil Procedure 15(c)(1)(A) provides that an amendment relates back to the date of the original pleading when a new party

[7] On appeal, it is unclear whether Appellants mean to claim misnomer and misidentification as to their negligence claim along with their § 1983 claim. Out of an abundance of caution, we will consider the argument in defense of both claims being untimely.

was timely served, the amendment does not violate any applicable statutes of limitations, and the party sought to be added:

> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
>
> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

FED. R. CIV. P. 15(c)(1)(C)(i)–(ii).[8] In other words, under Rule 15(c), the party to be brought in by amendment must have received notice of the action such that it would not be prejudiced in defending on the merits, and it must have known or should have known that the action would have been brought against it but for a mistake concerning the party's proper identity. "Furthermore Rule 15(c) is meant to allow an amendment changing the name of a party to relate back to the original complaint only if the change is the result of an error, such as a misnomer or misidentification." *Ultraflo Corp. v. Pelican Tank Parts, Inc.*, 926 F. Supp. 2d 935, 947 (S.D. Tex. 2013) (quoting *Miller v. Mancuso,* 388 Fed. Appx. 389, 391 (5th Cir.2010) (citation modified). "A misnomer occurs when a party misnames itself or another party, but the correct parties are involved." *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2009). Further, Rule 15(c) only applies to substituting or changing a defendant rather than adding a new one. *See Tapp v. Shaw Envtl., Inc.*, 401 F. App'x 930, 932 (5th Cir. 2010) (per curiam).

In reviewing Texas statutes of limitations, our court has held that FED. R. CIV. P 15(c) and TEX. CIV. PRAC. & REM. CODE § 16.068

[8] Similar to Texas law, FED. R. CIV. P. 15(c) also requires that the action concerning the newly added parties arise out of the same transaction or occurrence, and not be barred by any applicable statute of limitations.

control, such that "a claim will be deemed to relate back if relation back is permitted under state law, even if it is not permitted under federal law." *Schirle v. Sokudo USA, L.L.C.*, 484 F. App'x 893, 901 (5th Cir. 2012).

Texas law states that:

> If a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence.

TEX. CIV. PRAC. & REM. CODE § 16.068. Misidentification "arises when two separate legal entities exist and a plaintiff mistakenly sues an entity with a name similar to that of the correct entity." *Houston Orthopaedic*, 295 S.W.3d at 325. Misnomer occurs when a party misnames itself or another party, but the correct parties are involved. *Id.* "But we have made clear that tolling is generally not available in cases of misidentification, which involve suing the wrong defendant with a name similar to the one against which suit was intended." *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 670 S.W.3d 622, 628 (Tex. 2023) (citing *Houston Orthopaedic* at 325).

Appellants claim on appeal that they intended to name the Allegiance Defendants, but instead named the City of Dayton, believing that the City of Dayton was responsible for Madelyn's triage immediately following the accident. This assertion does not invoke the doctrine of misnomer or misidentification: the Allegiance Defendants are a private entity, wholly independent from the City of Dayton, and their names are in no way similar.

Appellants additionally cite to *Bailey v. University of Texas Health Science Center at San Antonio*, wherein plaintiffs were able to successfully relate back their medical negligence claims to add a negligent doctor's

employer. 261 S.W.3d 147 (Tex. App. 2008) 332 S.W.3d 395 (Tex. 2011). In that case, though the two defendants did not have similar names, the intended party was the original defendant's governmental employer and had full knowledge of the lawsuit at the time it was originally filed. *Id.* at 152–53.

The same is not true in Madelyn's case. She and her mother filed suit against the City of Dayton mistakenly believing that the city was responsible for her emergency medical care. At the time of the original filing, the Allegiance Defendants had no knowledge that they were an intended party of the lawsuit. Additionally, the Allegiance Defendants and the City of Dayton do not enjoy the employer-employee relationship present in *Bailey*. On the facts before us, we cannot say that the Allegiance Defendants knew or should have known that a lawsuit filed against the City of Dayton was meant to include them based on their involvement in an accident. Therefore, we conclude that the district court did not err in determining that the doctrines of misnomer and misidentification do not apply to the untimely claims made against the Allegiance Defendants.

3

Any negligence or § 1983 claims against Steve Smith, the paramedic employed by Allegiance, are likewise time-barred. *See id.* Smith was not named as a party in the original complaint. Smith, like his employer, was not named until Appellants filed their first amended complaint on October 12, 2023, outside of the statute of limitations for any negligence or § 1983 claim. As a private individual who was working for a private ambulance company, absent any additional facts, we must agree with the district court that Smith was properly dismissed along with his employer. We therefore conclude that all of Appellants' claims against the Allegiance Defendants are barred.

B

The Operative Complaint names the City of Dayton, the former mayor of Dayton Caroline Wadzeck, the former city manager Theo Melancon, former "Deputy City Manager/Chief [of] Police" Robert Vine, former police captain John D. Coleman, former criminal investigation division lieutenant Terri Hughes, police sergeant Kristen Seibert, the Dayton Volunteer Fire Department, and its former chief Murphy Green as defendants, (hereinafter "Dayton Defendants"). The claims brought against the Dayton Defendants are similar to those brought against the Allegiance Defendants. Specifically, Appellants contend that the Dayton Defendants "denied Madelyn [] life, liberty, and property in the pursuit of happiness and [] also denied [her] equal protection of the law. Additionally, Appellants claim that the Dayton Defendants "allow[ed] a faulty investigation to continue, depriving [Madelyn] of Crime Victim Compensation benefits for over two and a half years." We will analyze the claims against each of the Dayton Defendants below.

1

We begin first with former mayor Caroline Wadzeck, the City of Dayton Fire Department, and its chief Murphy Green. The Operative Complaint appears to allege equal protection and due process claims against these defendants pursuant to § 1983. Like the § 1983 claims against the Allegiance Defendants, the claims against these defendants are time-barred. Under Texas law, the statute of limitations for § 1983 claims is two years. *See Schirle*, *supra*; TEX. CIV. PRAC. & REM. CODE § 16.003(a). Appellants failed to name the City of Dayton Fire Department, Wadzeck, and Green in their original complaint. These defendants were first named in the first amended complaint filed more than two years after the statute of limitations expired. Appellants claim that they should have been afforded the

opportunity to replead to address their failure to timely name the above-mentioned defendants, or alternatively that their dismissals should have been without prejudice. Because the Appellants raise this argument as to every named defendant, this opinion will address, *infra*, the district court's dismissal with prejudice as to all defendants. Having discerned no other defense raised against the dismissal of these defendants by the Appellants, we affirm the district court's dismissal as to Wadzeck, the City of Dayton Fire Department, and Green as time-barred.

2

In addition to suing many of the City of Dayton's first responders and firefighters, Appellants appear to have attempted to bring a *Monell* liability claim against the City of Dayton itself. These claims are again vague and difficult-to-decipher. The Operative Complaint states that the City of Dayton and its officials "worked to obstruct justice in violation of Madelyn's First Amendment rights," and point to various pieces of evidence that they claim were purposefully lost in the post-accident investigation. The district court discerned these additional claims to be another § 1983 claim as well as a claim for *Monell* liability against the City of Dayton.

Section 1983 "makes liable every person who, under color of state law, violates federal constitutional rights." *Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616, 622 (5th Cir. 2018) (citation modified). To assert a *Monell* liability claim under § 1983 against the City of Dayton, an appellant must allege three elements: (1) a policymaker; (2) an official policy; and (3) a violation of a constitutional right by a policymaker whose "moving force" is the policy or custom. *Alvarez v. City of Brownsville*, 904 F.3d 382, 389 (5th Cir. 2018); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). There are three ways to establish a "policy" under *Monell*:

> First, a plaintiff can show written policy statements, ordinances, or regulations.[] Second, a plaintiff can show a widespread practice that is so common and well-settled as to constitute custom that fairly represents municipal policy.[] Third, even a single decision may constitute municipal policy . . . when the official or entity possessing final policymaking authority for an action performs the specific act that forms the basis of the § 1983 claim.

Webb v. Town of Saint Joseph, 925 F.3d 209, 215 (5th Cir. 2019) (citation modified).

The district court determined that the Appellants' *Monell* claim fails on its face. We agree. Appellants fail to bring forth any facts showing *any* ordinance or written policy statements, fail to show any widespread discriminatory practice in the City of Dayton, and, finally, fail to point to any specific act forming the basis of a § 1983 claim. Appellants again string together vague and conclusory allegations that fail to give rise to any violations of Madelyn's constitutional rights by the City of Dayton. Appellants do not attempt to support their claims against the City of Dayton, instead only arguing that they should have been given a chance to replead, that request seemingly being their last line of defense of all failing arguments.

3

As to the remaining Dayton Defendants, former city employees Vine, Coleman, and Hughes, each named in their official capacity, the district court discerned these claims to be redundant echoes of the claims against the City of Dayton itself. Again, we agree.

Because the City of Dayton is a named party, and because "official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent[,]" we hold that the district court properly dismissed Appellants' claims against the above-named

defendants as duplicative. *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (holding that suits against state officials in their official capacities should be treated as suits against the State) (citation modified). The Operative Complaint is rife with duplicative claims and it is apparent that Appellants simply restated the same claims against multiple defendants with the hope that at least one would succeed. We therefore conclude that the claims against the remaining Dayton Defendants were properly dismissed as duplicative.

In sum, the district court did not err in dismissing Appellants' claims against Vine, Coleman, and Hughes. These claims against the city's officials were properly dismissed for failing to state a claim, and for being duplicative of previously brought claims.

C

We next turn to appellee the City of Liberty, its fire department, and appellee Katelyn Grimes (collectively, the "Liberty Defendants"). In the Operative Complaint, Appellants name the City of Liberty, Texas along with City of Liberty paramedic Katelyn Grimes. Although the City of Liberty is named in the caption of the Operative Complaint, nowhere in the body of the complaint do the appellants list any causes of action against the city itself. The same can be said of Appellants' brief *and* their reply.

In analyzing the allegations against the City of Liberty, the district court construed the "extremely sparse and conclusory" claims as violations of Madelyn's due process and equal protection rights and found a discrimination claim under § 1983. As a threshold matter, the district court concluded that because Appellants failed to bring forth any claims against the City of Liberty in the Operative Complaint, they abandoned all claims against it. We agree. On appeal, Appellants likewise make no claims as to the City of Liberty. In fact, they make no mention of the city anywhere in their briefs.

As such, all claims against the City of Liberty were waived by Appellants when they first failed to name any cause of action against the city, and second failed to raise any issues on appeal as to this defendant. *See Ratcliff v. Texas*, 699 F. App'x 410, 411 (5th Cir. 2017) (unpublished) (citing *Brinkmann v. Dallas Cty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987).

Turning to paramedic Katelyn Grimes and the City of Liberty Fire Department, the Operative Complaint alleges that Grimes and the Liberty Fire Department discriminated against Madelyn and "denied [her] of life, liberty, and property in the pursuit of happiness and [] also denied Madelyn [] equal protection of the law." It further alleges that Madelyn's father, Flavio Quiroz was denied access to his injured daughter by Grimes at the scene of the accident, and that Madelyn's medical history was not obtained by Grimes, or by other emergency medical personnel on the scene.

The district court concluded that any possible discrimination claim fails because Appellants "state no facts at all showing that [Grimes or the Liberty Fire Department] discriminated against Madelyn and fail to allege any specific action for discrimination." We agree. Merely stating that discrimination has taken place without alleging supporting facts does not state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S., 662678 (2009).[9]

Appellants' failure to state a claim, combined with their inability to name any cause of action against the Liberty Defendants, and the high likelihood that any claim is barred by the applicable statutes of limitations,

[9] Additionally, had the district court been able to discern a plausible § 1983 claim, any such claim likely would be barred by applicable statutes of limitations. Appellants failed to name Katelyn Grimes or the Liberty Fire Department in their original complaint—they were not named as defendants until over two years after the statute of limitations had run. As discussed *supra*, the statute of limitations for § 1983 claims in Texas is two years. *See Schirle* 484 F. App'x at 901–02; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a).

leads our court to conclude that the district court correctly dismissed the claims against them.

D

In addition to the Appellants naming the City of Liberty, Texas, they also name city employees Jennifer Harkness, Matthew Poston, and Matthew Saldana. Harkness is the Liberty County District Attorney, and Poston and Saldana are Liberty County assistant district attorneys (the "Liberty County Defendants"). Appellants claim that the Liberty County Defendants discriminated against Madelyn, denying her equal protection of the law. Specifically, Appellants claim that Harkness and the assistant district attorneys assigned to the criminal case against Morgan White did not properly prosecute White, "fail[ing] the public and [the] victim." Appellants claim that Poston simply felt that it would "be too hard to try this case" leading to his refusal to review new evidence. Appellants argue that the Liberty County Defendants' failure to adequately prosecute White was the result of discrimination against Madelyn due to her race and deprived her of Crime Victim Compensation benefits and due process of law.

The district court, "for the sake of thoroughness" assumed that Appellants intended to assert claims under federal and state law. The court then concluded that all Liberty County Defendants were entitled to Eleventh Amendment immunity from any federal claims, and absolute prosecutorial immunity from any claims made against them in their individual capacities. We agree.

1

Appellants' claims against the Liberty County Defendants in their official capacities unquestionably relate to decisions made in their roles as prosecutors for Liberty County. They are therefore entitled to immunity under the Eleventh Amendment. *See Quinn v. Roach*, 326 F. App'x 280, 292

(5th Cir. 2009) (granting Eleventh Amendment immunity to district attorneys and assistant district attorneys sued in their official capacities for claims relating to decisions about whether and when to bring charges); *see also Moreno v. Donna Indep. Sch. Dist.*, 589 F. App'x 677, 680 (5th Cir. 2014) (finding that the Eleventh Amendment shields district attorney from official-capacity liability). We note, however, that claims barred by sovereign immunity should be dismissed without prejudice, not with prejudice. *United States v. $4,480,466.16 in Funds Seized from Bank of Am. Acct. Ending in 2653*, 942 F.3d 655, 666 (5th Cir. 2019) (citing *Warnock v. Pecos Cty., Tex.*, 88 F.3d 341, 343 (5th Cir. 1996)). Therefore, we affirm the dismissal of the Liberty County defendants with the modification that their dismissal be without prejudice.

2

There is one additional jurisdictional issue that we must address *sua sponte* as to the Liberty County Defendants, and that issue is one of standing. In a previous case before this circuit, we held that a victim lacked standing to sue a prosecutor who failed to bring charges against her assailant. *See Lefebure v. D'Aquilla*, 15 F.4th 650 (5th Cir. 2021). In that case, the prosecutor allegedly failed to "prosecute *or even investigate* [the alleged perpetrator]." *Id.* at 655. The appellant in *Lefebure* brought forth specific allegations and evidence of wrongdoing by D'Aquilla, the would-be prosecutor in the criminal case against her assailant. The panel in *Lefebure* noted that the victim deserved to have her day in court but that its hands were tied: "Supreme Court precedent makes clear that a citizen does not have standing to challenge the policies of the prosecuting authority unless she herself is prosecuted or threatened with prosecution." *Id.* at 652.

In the case at bar, the general allegations in the Operative Complaint fail to point our court to any cognizable claims.[10] We therefore conclude that Appellants also lack standing to file suit against the Liberty County Defendants. Because dismissals based on lack of standing must be dismissed without prejudice, we affirm the dismissal as modified, *supra*.

3

While the Operative Complaint mentions that the Liberty County Defendants were sued only in their official capacities, on appeal, Appellants argue that these defendants are "not entitled to prosecutorial immunity [for] claims brought against them in their individual capacities under both state and federal law." It is therefore not altogether clear whether Appellants intended to sue the Liberty County Defendants in their official capacities, their individual capacities, or both. Because "courts may not simply rely on the characterization of the parties in the complaint[,]" we will consider claims against the Liberty County Defendants in their individual capacities as well. *Lewis v. Clarke*, 581, U.S. 155, 162 (2014).

As to the Liberty County Defendants being sued in their individual capacities, "[t]he identity of the real party in interest dictates what immunities may be available." *Id.* at 163 (citing *Kentucky v. Graham*, 473 U.S. 159 (1985)). "An officer in an individual-capacity action . . . may be able to assert *personal* immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances." *Id.* (citing *Van de Kamp v. Goldstein,* 555 U.S. 335, 342–344 (2009)). On appeal, Appellants argue

[10] Appellants claim that Madelyn was deprived of Crime Victims' Compensation by the Liberty Defendants' failure to prosecute the case. However, according to the Texas Office of Attorney General's website on Eligibility for Crime Victims' Compensation, a claimant need only show that "there is enough evidence to show the crime occurred." There is no requirement that a judgment be rendered in the victim's favor.

that the Liberty County Defendants are being sued, not because of their roles as prosecutors, but rather for their "administrative and police-type acts." Appellants cite to the Supreme Court's holding in *Van de Kamp* that "absolute immunity does not apply when a prosecutor gives advice to police during a criminal investigation[.]" *Id.* at 343. But there are no such allegations here. The Operative Complaint points to various decisions the Liberty County Defendants made in their roles as advocates for the state. Further, Appellants fail to bring forth any arguments supporting their contention that the Liberty County Defendants were acting in their administrative role. Rather, Appellants criticize decisions made in handling of the prosecution of the case, which were "intimately associated with the judicial phase of the criminal process" *Id.* (quoting *Imbler v. Pachtman,* 424 U.S. 409, 428, 430 (1976)).

"District attorneys and assistant district attorneys in Texas are agents of the state when acting in their prosecutorial capacities." *Quinn*, 326 F. App'x at 292. Therefore, prosecutors are absolutely immune, under prosecutorial immunity, from liability with respect to actions taken by them while representing the government in judicial proceedings. *Imbler* 424 U.S. at 430–31. We therefore conclude that any claims brought against these defendants in their individual capacity are barred by prosecutorial immunity.

E

Appellants also bring negligence and obstruction of justice claims against Union Pacific Railroad, James Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Eduardo Hernandez. These appellees did not respond to Appellants' Operative Complaint—some responded to previous versions of the Appellants' complaints, and some did not respond at all. Due to the varying nature of these appellees' circumstances, our court will address the claims against each of these appellees below.

1

At the district court, Union Pacific Railroad filed a Rule 12(b)(6) motion to dismiss the Appellants' first amended complaint.[11] That motion was denied as moot after Appellants were permitted to amend for a third time. Union Pacific Railroad did not file an answer or motion to dismiss in response to the Operative Complaint. On appeal, Appellants argue only that their state law claims against Union Pacific should be dismissed without prejudice, so that they may have the opportunity to replead. However, neither we nor the district court discerned any state law claims made against Union Pacific. That general claim as to all defendants is discussed, *infra*.

2

Morgan White's parents, James Bice and Stephanie Lee Blum Bice, were named in the Operative Complaint for interfering with a criminal investigation, among other related claims. Like Union Pacific, the Bices responded to Appellants' first amended complaint with a Rule 12(b)(6) motion to dismiss, which was later denied as moot by the district court following Appellants' subsequent amendments to their complaint. Like all other claims made by Appellants, the claims against the Bices are vague and difficult to understand. Appellants allege that the Bices "acted in concert . . . to obstruct justice in the investigation of the injured plaintiff and its causes." The district court found no discernible claims against the Bices in the complaint, as amended, and dismissed all charges against them with prejudice. On appeal, Appellants' sole argument is that their claims against

[11] In their first amended complaint, Appellants alleged the same vague and conclusory § 1983 claims against Union Pacific, mirroring those they brought against the Dayton Defendants, Allegiance Defendants, and Liberty Defendants. The district court additionally held that appellants failed to properly establish Union Pacific was a state actor for purposes of their § 1983 claim.

the Bices should not have been dismissed with prejudice and that they should have a right to replead to address the deficiencies highlighted by the district court.

F

Finally, Appellants bring claims against Eduardo Hernandez and Morgan White, the two teenage drivers in the incident. On appeal, Appellants request that we dismiss the claims against Hernandez without prejudice. The district court has already done so.

Turning to Morgan White, astonishingly, Appellants fail to bring forth *any* claims against her in the body of the complaint, as amended, despite their later contention that they had done so. On appeal, Appellants argue that the negligence claims against White were not dismissed by the district court. That is true, in fact, because *Appellants failed to bring any negligence claims against her*. Consequently, there was no error in dismissing the complaint as to Morgan White.

G

On appeal, in defense of the dismissal of all claims against all defendants, Appellants make one recurring argument: they should be permitted to replead or, alternatively, they ask our court to remand with the instruction to dismiss all claims against all named defendants without prejudice. In a motion for reconsideration that the district court construed as a Rule 59(e) motion to alter judgment, Appellants restated their claims as to all defendants, arguing that any deficiencies found by the district court could be corrected if Appellants were given the opportunity to replead. The district court disagreed. So do we.

From their original complaint to their now-operative and counseled second corrected amended complaint, the factual support for the claims

asserted has been lacking. It is clear that allowing Appellants to replead for the fourth time would be entirely futile. "A proposed amendment is futile if the amended complaint fails to state a claim upon which relief could be granted." *Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 766 (5th Cir. 2016). Having already determined that all of Appellants' claims are rooted in futility, we affirm the district court's dismissal of all claims with prejudice, with the exception of those Defendants whose Eleventh Amendment immunity require that dismissal be without prejudice. We therefore also decline Appellants' request to instruct the district court to dismiss all claims against the other defendants without prejudice.

* * *

For the foregoing reasons, we AFFIRM the district court's judgment, with the exception of the dismissal of the Liberty County Defendants, whose dismissal we modify to be without prejudice.

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

MADELYN MARINA QUIROZ, MARINA NAOMI HERNANDEZ QUIROZ, Plaintiffs, v. CITY OF DAYTON *et al.*, Defendants.	§ § § § § § § § § § §	NO. 1:23-CV-00273-MAC

ORDER DENYING MOTION TO ALTER JUDGMENT

Pending before the court is Plaintiffs Madelyn and Marina Quiroz's *Motion for Reconsideration* (Doc. No. 56). Because there was no trial in this case, the court will construe the motion as a motion for reconsideration of the order granting defendants' motion to dismiss (Doc. No. 54). The Quirozes reassert their argument that the court should have granted them leave to amend their complaint for a fourth time to correct any deficiencies. Doc. No. 56. Having considered the pending motion, the submissions of the parties, the pleadings, and the applicable law, the court is of the opinion that the Quirozes' motion should be **DENIED**.

The Federal Rules of Civil Procedure do not recognize a motion for reconsideration. *Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328 n.1 (5th Cir. 2004); *Teal v. Eagle Fleet, Inc.*, 933 F.2d 341, 347 (5th Cir. 1991); *Hamilton Plaintiffs v. Williams Plaintiffs*, 147 F.3d 367, 371, n.10 (5th Cir. 1998). A motion challenging a prior judgment on the merits, however, may be treated as a motion to alter or amend under Rule 59(e) if "served within 28 days of the rendition of judgment," as was the case here. *Smith-Idol v. Halliburton*, No. H-06-1168, 2010 WL 2196268, at *1 (S.D. Tex. May 27, 2010); *see also Edward H. Bohlin Co., Inc. v. Banning Co.*, 6

F.3d 350, 353 (5th Cir. 1993); *Steadfast Ins. Co. v. SMX 98, Inc.*, No. H-06-2736, 2009 WL 3190452, at *4 (S.D. Tex. Sept. 28, 2009).

A Rule 59(e) motion questions the correctness of a court's prior judgment. *In Re Rodriguez*, 695 F.3d 360, 371 (5th Cir. 2012) (citing *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)). The rule is designed to serve the "narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004); *accord Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005), *cert. denied*, 549 U.S. 1166 (2007); *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). Relief under Rule 59(e) is also appropriate when there has been an intervening change in the controlling law. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003); *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002). A Rule 59(e) motion may not be used simply for "rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment" or to relitigate matters that were not resolved to the movant's satisfaction. *Templet*, 367 F.3d at 479; *accord Nationalist Movement v. Town of Jena*, 321 F. App'x 359, 364 (5th Cir. 2009); *Ross*, 426 F.3d at 763; *Mongrue v. Monsanto Co.*, 249 F.3d 422, 427 (5th Cir. 2001); *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990); *Jackson v. Waller Indep. Sch. Dist.*, 625 F. Supp. 2d 357, 363 (S.D. Tex. 2008). Mere disagreement with a district court's order does not warrant reconsideration of the order. *See St. Paul Mercury Ins. Co. v. Lewis-Quinn Constr.*, No. H-10-5146, 2012 WL 5381701, at *1 (S.D. Tex. Oct. 31, 2012); *Krim v. pcOrder.com, Inc.*, 212 F.R.D. 329, 332 (W.D. Tex. 2002).

A district court has considerable discretion to grant or deny a motion under Rule 59(e); however, "such discretion is not limitless." *Templet*, 367 F.3d at 479; *see Livingston Downs Racing Ass'n, Inc. v. Jefferson Downs Corp.*, 259 F. Supp. 2d 471, 475 (M.D. La. 2002). When

considering a motion to alter or amend judgment, "[t]he court must strike the proper balance between two competing imperatives: 1) finality and 2) the need to render just decisions on the basis of all the facts." *Edward H. Bohlin Co.*, 6 F.3d at 355; *accord Templet*, 367 F.3d at 479. The granting of such a motion is an extraordinary remedy that should be used sparingly. *Templet*, 367 F.3d at 479. Accordingly, the Rule 59(e) standard "favor[s] the denial of motions to alter or amend a judgment." *S. Constructors Grp., Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993). Hence, to be successful, "a motion to alter or amend [a] judgment under Rule 59(e) 'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued.'" *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003) (quoting *Simon*, 891 F.2d at 1159); *accord Schiller*, 342 F.3d at 567. "The manifest injustice standard presents . . . a high hurdle" for the movant. *Westerfield v. United States*, 366 F. App'x 614, 619 (6th Cir. 2010); *see also Simon*, 891 F.2d at 1159 (recognizing that the movant bears the burden of "clearly establishing" a manifest error in the context of a Rule 59(e) motion). The United States Court of Appeals for the Fifth Circuit has defined "manifest error" as one that is "plain and indisputable, and that amounts to a complete disregard of the controlling law." *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004).

In their motion, the Quirozes ask the court for an opportunity to replead to cure deficiencies in the complaint and, failing that, an opportunity to replead their claims against only Defendants Morgan White and Eduardo Hernandez. Doc. No. 56 at 6. This argument was already rejected by the court in its *Order Overruling Objections and Adopting Magistrate Judge's Report and Recommendation*. Doc No. 54 at 3–4. To the extent the Quirozes make any new legal arguments,

these arguments fail because they are not based on any manifest error of law and were arguments that could have been made before final judgment.

Therefore, the Quirozes' motion fails to meet the standard to obtain relief under Rule 59(e). The Quirozes merely reassert the legal arguments contained in their initial response to the defendants' motions to dismiss and in their objections to Judge Hawthorn's *Report and Recommendation*. Doc. No. 56. Further, the Quirozes have presented neither evidence of a manifest error by the court nor any newly discovered evidence that was previously unavailable. Accordingly, the Quirozes' *Motion for Reconsideration* (Doc. No. 56) is **DENIED**.

SIGNED at Beaumont, Texas, this 19th day of December, 2024.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ, Plaintiffs, *v.* EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, CITY MANAGER; FNU DICKENSON, CITY MANAGER; ROBERT VINE, CHIEF; JOHN D. COLEMAN, DAYTON POLICE CAPTAIN; TERRI HUGHES, CID LT.; CAROLINE WEDZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, LIBERTY COUNTY DISTRICT ATTORNEY; MATTHEW POSTON, LIBERTY COUNTY ATTORNEY; MATTHEW SALDANA; CITY OF LIBERTY TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; RAMJI LAW GROUP; JAMEY WAYNE BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY; ADAM RAMJI, Defendant.	§ §	NO. 1:23-cv-00273-MAC-ZJH

FINAL JUDGMENT

The Court has adopted the Magistrate Judge's report recommending that the Court dismiss this case. Accordingly, it is ORDERED that Plaintiffs' claims against Liberty County

District Attorney Jennifer Bergman Harkness, Liberty County Attorney Matthew Poston, Liberty County Assistant Attorney Matthew Saldana, Allegiance Mobile Health Medical Service, Steve Smith, City of Liberty, Katelyn Grimes, City of Dayton, the City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, Murphy Green, Ramji Law Group, Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and the Union Pacific Railroad Company are DISMISSED WITH PREJUDICE. Plaintiffs' claims against Defendant Eduardo Hernandez are DISMISSED WITHOUT PREJUDICE.

The Clerk of Court is directed to close this case, and all pending motions are denied as moot.

SIGNED at Beaumont, Texas, this 12th day of September, 2024.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ, Plaintiffs, *v.* EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, CITY MANAGER; FNU DICKENSON, CITY MANAGER; ROBERT VINE, CHIEF; JOHN D. COLEMAN, DAYTON POLICE CAPTAIN; TERRI HUGHES, CID LT.; CAROLINE WEDZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, LIBERTY COUNTY DISTRICT ATTORNEY; MATTHEW POSTON, LIBERTY COUNTY ATTORNEY; MATTHEW SALDANA; CITY OF LIBERTY TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; RAMJI LAW GROUP; JAMEY WAYNE BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY; ADAM RAMJI, Defendants.	§ §	NO. 1:23-cv-00273-MAC-ZJH

ORDER OVERRULING OBJECTIONS AND ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On July 17, 2023, the court referred this case to the Honorable Zack Hawthorn, United States Magistrate Judge, for pretrial management. Pending before the court are four motions to dismiss:

(1) Defendants Liberty County District Attorney Jennifer Bergman Harkness, Liberty County Attorney Matthew Poston, and Liberty County Assistant Attorney Matthew Saldana (collectively, "the Liberty County Defendants")'s *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20);

(2) Defendants Allegiance Mobile Health Medical Service and Steve Smith (collectively, "the Allegiance Defendants")'s *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21);

(3) City of Liberty Defendants' *Motion to Dismiss Plaintiffs' Second Amended Complaint* (Doc. No. 23); and

(4) City of Dayton Defendants' *Corrected Motion to Dismiss Plaintiffs' Corrected Second Amended Complaint* (Doc. No. 24).

On July 30, 2024, Judge Hawthorn issued his Report and Recommendation (Doc. No. 43), which recommends granting all four motions to dismiss. On August 13, 2024, Plaintiffs filed a *Motion for Default Judgment as to Eduardo Hernandez* (Doc. No. 44) and *Objections* to Judge Hawthorn's report (Doc. No. 45). On August 20, 2024, the City of Dayton Defendants filed a *Response to the Objections* (Doc. No. 48), and the City of Liberty Defendants filed a *Response to the Objections* (Doc. No. 49). On August 27, 2024, the Allegiance Defendants filed a *Response to the Objections* (Doc. No. 52). On September 4, 2024, the Plaintiffs filed a *Reply to the Defendants' Responses* (Doc No. 53).

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(l)(c); FED. R. CIV. P. 72(b)(2)–(3). The court has conducted a *de novo* review of Judge Hawthorn's Report and Recommendation and has carefully considered Plaintiffs' objections. The court finds that Judge Hawthorn's findings and conclusions of law are correct, and that Plaintiffs' objections are without merit.

1. **Objection 1: The Report and Recommendation failed to address Plaintiffs' request for leave to amend their complaint.**

Plaintiffs contend that Judge Hawthorn failed to address their request for leave to amend their complaint. Doc. No. 45 at 2, 4, 7. Plaintiffs are correct that Judge Hawthorn did not make a specific finding on whether leave to amend should be granted. However, the court finds that allowing Plaintiffs to amend their complaint for the fourth time would be futile. First, Plaintiffs do not have the right to amend their complaint as a matter of course under FED. R. CIV. P. 15(a)(1). Second, although FED. R. CIV. P. 15(a)(2) provides that a court "should freely give leave [to amend] when justice so requires," it is within the district court's discretion to grant or deny leave to amend. *Marucci Sports, L.L.C. v. National Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014). "A district court should examine five considerations to determine whether to grant a party leave to amend a complaint: 1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment." *SGK Properties, L.L.C. v. U.S. Bank Nat'l Ass'n*, 881 F.3d 933, 944 (5th Cir. 2018) (internal quotations and alterations omitted).

Regarding the fifth element, "[t]he liberal amendment rules . . . do not require that courts indulge in futile gestures. Where a complaint, as amended, would be subject to dismissal, leave to amend need not be granted." *United States ex rel. Jackson v. Univ. of N. Texas*, 673 F. App'x 384, 388 (5th Cir. 2016). "At some point a court must decide that a plaintiff has had a fair opportunity to make his case; if, after that time, a cause of action has not been established, the court should finally dismiss the suit." *Gentilello v. Rege*, 627 F.3d 540, 546 (5th Cir. 2010).

The court agrees with Judge Hawthorn's recommendations on the instant motions. The Liberty County Defendants are entitled to Eleventh Amendment immunity and absolute

prosecutorial immunity. Doc. No. 43 at 10. Plaintiffs' claims against the Allegiance Defendants, Grimes, City of Dayton Fire Department, Wadzeck, and Green are time-barred. *Id.* at 13, 18–19. Plaintiffs fail to state a claim against the City of Liberty. *Id.* at 17. Plaintiffs' official capacity claims against Defendants Seibert, Melancon, Vine, Coleman, and Hughes are redundant of their claims against the City of Dayton and should be dismissed. *Id.* at 21. Plaintiffs fail to state a *Monell* claim against the City of Dayton. *Id.* at 23. Plaintiffs also fail to state a claim against Defendants Ramji Law Group, Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Union Pacific Railroad Company. *Id.* at 24.

Plaintiffs have amended their complaint three times. *See* Doc. Nos. 4, 17, 18. The court finds that Plaintiffs have had a fair opportunity to plead sufficient facts supporting their claims and is unpersuaded that allowing Plaintiffs to amend their complaint for the fourth time would cure the numerous deficiencies in their operative complaint. Accordingly, this objection is overruled, and Plaintiffs' request for leave to amend their *Corrected Second Amended Complaint* (Doc. No. 18) is denied.

2. **Objection 2: Plaintiffs' claims against the Allegiance Defendants are not timely because the relation back doctrine applies and tolls the statute of limitations.**

Plaintiffs contend that their claims against the Allegiance Defendants are timely. Doc. No. 45 at 3. Additionally, Plaintiffs contend that the relation back doctrine applies because Plaintiffs misidentified the City of Dayton as the provider of emergency medical services when the proper defendants were the Allegiance defendants. *Id.* at 4. This objection merely restates Plaintiffs' prior argument, which Judge Hawthorn thoroughly considered and rejected in his Report. Doc. No. 43 at 14–16. The court agrees with Judge Hawthorn's conclusion that Plaintiffs fail to establish misidentification or misnomer sufficient to invoke the relation back

doctrine under FED. R. CIV. P. 15(c) or TEX. CIV. PRAC. & REM. CODE § 16.068. *Id.* at 15–16. The court also agrees with Judge Hawthorn's conclusion that Plaintiffs' negligence and constitutional claims against the Allegiance Defendants are time barred. *Id.* at 16. Accordingly, this objection is overruled.

3. **Objection 3: The Report and Recommendation erroneously determined that Plaintiff failed to allege Allegiance was a state actor.**

Plaintiffs vaguely contend that "[t]he recommendations erroneously determined that Plaintiff failed to allege Allegiance was a state actor but the facts clearly contradict that assertion." Doc. No. 45 at 4. Judge Hawthorn made no finding as to whether Defendant Allegiance Mobile Health was a state actor. Rather, in his Report, Judge Hawthorn merely summarized the Allegiance Defendants' contention that "Plaintiffs fail to allege that the Allegiance Defendants are state actors." Doc. No. 43 at 11. However, Judge Hawthorn did not reach that argument because he first concluded that Plaintiffs' claims against the Allegiance Defendants are time barred. Doc. No. 43 at 11. The court agrees with Judge Hawthorn's conclusion. Accordingly, this objection is overruled.

4. **Objection 4: The Report and Recommendation failed to address Plaintiffs' medical negligence claims.**

Plaintiffs argue, in conclusory fashion, that Judge Hawthorn failed to address their medical negligence claims. Doc. No. 45 at 4. Judge Hawthorn discerned only two negligence claims alleged in Plaintiffs' operative complaint and addressed both claims in the instant Report. Doc. No. 43 at 11–13, 25. Judge Hawthorn correctly concluded that Plaintiffs' medical negligence claims against the Allegiance Defendants are time barred. Doc. No. 43 at 11–13. Additionally, Judge Hawthorn recommended that the court should decline to exercise supplemental jurisdiction over Plaintiffs' negligence claim against Defendant Hernandez and

dismiss this claim without prejudice. Doc. No. 43 at 25. The court agrees with these recommendations and concludes that Judge Hawthorn properly considered Plaintiffs' negligence claims. While Plaintiffs' operative complaint is replete with conclusory mentions of the word "negligence," the court cannot discern any other plausible negligence claims. *See generally* Doc. No. 18. Accordingly, this objection is overruled.

5. **Objection 5: Plaintiffs' claims against Defendants Hernandez, Ramji Law Group, Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, White, Allegiance, Steve Smith, and Union Pacific should not be dismissed without prejudice.**

Plaintiffs urge the court not to dismiss their claims against Defendants Hernandez, Ramji Law Group, Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, White, Allegiance, Steve Smith, and Union Pacific. Doc. No. 45 at 4–5. Judge Hawthorn correctly concluded that Plaintiffs "fail to plead sufficient facts to establish a cognizable cause of action" against the Ramji Law Group, Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Union Pacific Railroad Company. Doc. No. 43 at 23–24. The court finds this objection unavailing, and accordingly, it is overruled.

6. **Objection 6: The Court should not decline to exercise supplemental jurisdiction until Plaintiff has an opportunity to seek default judgment against the parties who failed to respond.**

Plaintiffs object to Judge Hawthorn's recommendation that the court should decline to exercise supplemental jurisdiction over Plaintiffs' state law claims against various defendants. Doc. No. 45 at 5. Under 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction over a claim if the district court has dismissed all claims over which it has original jurisdiction. This decision is within the discretion of the district court. The court finds Plaintiffs' conclusory objection to Judge Hawthorn's recommendation unavailing, and accordingly, it is overruled.

7. **Objection 7: The Liberty County Defendants are not entitled to prosecutorial immunity from any of Plaintiffs' claims brought against them in their individual capacities.**

Plaintiffs assert that their claims against the Liberty County Defendants are not barred by absolute prosecutorial immunity because prosecutorial immunity applies only to acts of advocacy, and not to administrative and "police-type" investigative acts. Doc. No. 45 at 6. Judge Hawthorn properly considered Plaintiffs' claims against the Liberty County Defendants in both their official and individual capacities in his Report. Doc. No. 43 at 8–10. Judge Hawthorn correctly concluded that Plaintiffs' claims against the Liberty County Defendants in both their official and individual capacities arise from the "Defendants' alleged decisions not to file criminal charges against certain individuals." *Id.* at 9–10. Judge Hawthorn also correctly concluded that the Liberty County Defendants are entitled to Eleventh Amendment immunity for official capacity claims and absolute prosecutorial immunity for individual capacity claims arising from their decisions not to file criminal charges. *Id.*

Therefore, the court finds this objection without merit, and it is accordingly overruled. Plaintiffs also request leave to amend their operative complaint regarding this claim. Doc. No. 45 at 6–7. For the reasons discussed above, the court concludes that a fourth amended complaint would be futile, and accordingly, this request is denied.

It is, therefore, ORDERED that Plaintiffs Madelyn Marina Quiroz and Marina Naomi Hernandez Quiroz's *Objections to Report and Recommendation* (Doc. No. 45) are OVERRULED.

It is further ORDERED that Judge Hawthorn's Report and Recommendation (Doc. No. 43) is ADOPTED.

It is further ORDERED that Defendants Liberty County District Attorney Jennifer

Bergman Harkness, Liberty County Attorney Matthew Poston, and Liberty County Assistant Attorney Matthew Saldana's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20) is GRANTED.

It is further ORDERED that Defendants Allegiance Mobile Health Medical Service and Steve Smith's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21) is GRANTED.

It is further ORDERED that City of Liberty Defendants' *Motion to Dismiss Plaintiffs' Second Amended Complaint* (Doc. No. 23) is GRANTED.

It is further ORDERED that City of Dayton Defendants' *Corrected Motion to Dismiss Plaintiffs' Corrected Second Amended Complaint* (Doc. No. 24) is GRANTED.

Accordingly, Plaintiffs' claims against Defendants Liberty County District Attorney Jennifer Bergman Harkness, Liberty County Attorney Matthew Poston, Liberty County Assistant Attorney Matthew Saldana, Allegiance Mobile Health Medical Service, Steve Smith, City of Liberty, Katelyn Grimes, City of Dayton, the City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, Murphy Green, Ramji Law Group, Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Union Pacific Railroad Company are DISMISSED WITH PREJUDICE.

Plaintiffs' claims against Defendant Eduardo Hernandez are DISMISSED WITHOUT PREJUDICE. Plaintiffs' *Motion for Default Judgment* (Doc. No. 44) is DENIED AS MOOT.

The court will enter a Final Judgment separately.

SIGNED at Beaumont, Texas, this 12th day of September, 2024.

Marcia A. Crone

MARCIA A. CRONE
8 UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ,

Plaintiffs,

vs.

EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, CITY MANAGER; FNU DICKENSON, CITY MANAGER; ROBERT VINE, CHIEF; JOHN D. COLEMAN, DAYTON POLICE CAPTAIN; TERRI HUGHES, CID LT.; CAROLINE WEDZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, LIBERTY COUNTY DISTRICT ATTORNEY; MATTHEW POSTON, LIBERTY COUNTY ATTORNEY; MATTHEW SALDANA; CITY OF LIBERTY TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; RAMJI LAW GROUP; JAMEY WAYNE BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY; ADAM RAMJI,

Defendants.

NO. 1:23-CV-00273-MAC-ZJH

REPORT AND RECOMMENDATION GRANTING MOTIONS TO DISMISS

This civil rights case is assigned to the Honorable Marcia A. Crone, United States District Judge. On July 17, 2023, Judge Crone referred this case to the undersigned United States Magistrate Judge for pretrial management. Doc. No. 1.

Pending before the court are four motions to dismiss:

(1) Defendants Liberty County District Attorney Jennifer Bergman Harkness, Liberty County Attorney Matthew Poston, and Liberty County Assistant Attorney Matthew Saldana's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20);

(2) Defendants Allegiance Mobile Health Medical Service and Steve Smith's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21);

(3) City of Liberty Defendants' *Motion to Dismiss Plaintiffs' Second Amended Complaint* (Doc. No. 23); and

(4) City of Dayton Defendants' *Corrected Motion to Dismiss Plaintiffs' Corrected Second Amended Complaint* (Doc. No. 24).

At the outset, the undersigned notes that Plaintiffs' *Corrected Second Amended Complaint* (Doc. No. 18) is riddled with pleading deficiencies, difficult to decipher throughout, and replete with vague, conclusory allegations. Nonetheless, it appears that Plaintiffs generally assert various constitutional claims pursuant to 42 U.S.C. § 1983. Plaintiffs' claims arise from a serious car accident that occurred in Dayton, Texas that left Plaintiff Madelyn Quiroz as paraplegic. Plaintiff Marina Naomi Hernandez Quiroz is Madelyn Quiroz's mother. The instant motions to dismiss involve Plaintiffs' claims against local government defendants and a private ambulance company that responded to the accident. After careful review of the filings and applicable law, the undersigned recommends granting all four motions to dismiss.

I. Factual and Procedural Background

This case arises from a serious car accident that occurred in Dayton, Texas on January 23, 2020. Doc. No. 18 at 4. Plaintiff Madelyn Quiroz, then a 16-year-old, was the backseat passenger of a car driven by Defendant Morgan White. *Id.* at 3. On the afternoon in question, White was driving fast—between 86 and 96 miles per hour on a roadway with a speed limit of 30 miles per hour—to race with Defendant Eduardo Hernandez, who was driving a separate automobile. *Id.*

White ultimately lost control of her vehicle and the vehicle was launched airborne, traveling approximately 10 to 15 feet over a deep ditch and landing on railroad tracks. *Id.* Quiroz suffered life threatening injuries due to the crash, including internal bleeding, a partially collapsed lung, head trauma, a fractured nose, a bleeding spleen, a broken arm, a damaged radial nerve, broken ribs, a broken back, and a serious spinal cord injury. *Id.* As a result of the collision, Quiroz is now a paraplegic. *Id.* at 34, ¶ 149. Quiroz turned 18 years old on July 18, 2021. *Id.* at 4.

The instant motions to dismiss address Plaintiffs' claims against various local government and private ambulance company defendants. These claims relate to the medical treatment of Madelyn Quiroz at the scene of the accident and the subsequent investigation and evaluation of the accident by local authorities.

Defendant Harkness is the Liberty County District Attorney, Defendant Poston is a Liberty County Attorney, and Defendant Saldana is an Assistant Liberty County Attorney (collectively, "the Liberty County Defendants"). Doc. No. 18 at 18–23. All three are sued in their official capacities. *Id.* According to the facts alleged in the operative complaint, Defendant Harkness refused Marina Quiroz's attempts to meet with her for over two years, would not pursue charges against Defendant Hughes for apparently deleting body camera footage, and failed to investigate misconduct. *Id.* at 18, ¶ 55. Additionally, Plaintiffs allege that Defendant Poston failed to ensure that Dayton Police Department followed standard practices during the investigation of the incident and failed to submit allegedly new evidence that Defendant White was "getting high in the school restroom" minutes before getting behind the wheel prior to the accident. *Id.* at 19, ¶¶ 60–72. Plaintiffs allege that Defendant Saldana failed to submit the same alleged new evidence. *Id.* at 23.

Defendant Allegiance Mobile Health ("Allegiance") is an emergency medical service provider and Defendant Steve Smith was a paramedic employed by Allegiance (collectively, "the

Allegiance Defendants"). *Id.* at 25, ¶¶ 106–107. Defendant Smith was one of the paramedics who responded to the accident. *Id.* According to Plaintiffs, an argument occurred between Defendant Smith and Defendant Murphy Green, the City of Dayton Fire Chief, at the scene of the accident. *Id.*, ¶ 108. The argument concerned whether to contact Life Flight, a helicopter emergency medical transport service, in providing emergency treatment to Quiroz. *Id.*, ¶¶ 108, 138. This contributed to a 90-minute delay in activating Level 1 Trauma protocols. *Id.* Additionally, Plaintiffs allege that Defendant Smith failed to properly assess Quiroz's injuries, which also delayed her treatment and transport to a Level 1 Trauma Facility. *Id.* at 27, ¶ 118. Plaintiffs' allegations against Defendant Murphy Green, former Chief of the Dayton Volunteer Fire Department, are identical to the allegations against Defendant Smith. *Id.* at 17. Plaintiffs did not file suit against the Allegiance Defendants until October 12, 2023, when they filed their *First Amended Complaint* (Doc. No. 4).

Plaintiffs allege that Defendant Katelyn Grimes, a paramedic employed by Defendant City of Liberty (collectively, "the Liberty Defendants") prevented Flavio Quiroz, Madelyn Quiroz's father, from accessing her at the scene of the accident. *Id.* at 25, ¶ 102. Defendant Grimes is sued in her official capacity.

Finally, Plaintiffs sue a variety of defendants employed by the City of Dayton. All are sued in their official capacities. *Id.*, ¶¶ 13, 17, 20, 31, 39, 47, 51. Regarding the City of Dayton itself, Plaintiffs offer a litany of allegations: that the City was untruthful to the Texas Attorney General's office, denied proper hold of the wrecked automobile, failed to conduct a complete preliminary scene investigation, failed to procure medical records showing Defendant White's intoxication, failed to collect witness statements after the accident, suppressed the completion of a criminal investigation into Defendant White, deceived Marina Quiroz about the investigation, and failed to disclose which officer was assigned to investigate the accident. *Id.* at 4–6, ¶¶ 4–12.

Regarding Defendant Wadzeck, the former Mayor of Dayton, Plaintiffs allege that Wadzeck allowed her staff members to "fail the public" by disregarding and violating certain policies and procedures. *Id.* at 6, ¶ 14. Plaintiffs also allege that Wadzeck was involved in depriving Madelyn Quiroz of Crime Victim Compensation benefits. *Id.* Plaintiffs assert identical allegations against Defendant Theo Melancon, the former Dayton City Manager, and Defendant John Coleman, former police captain. *Id.* at 7, ¶ 17.

Plaintiffs also assert identical allegations against Defendant Robert Vine, former Deputy City Manager and Chief of Police. *Id.* at 8, ¶ 22. Additionally, Plaintiffs allege that Defendant Vine failed to properly supervise his staff, failed to follow up relevant leads related to the case, and failed to interview the other occupants of the car in which Quiroz was traveling during the accident. *Id.* at 9. Plaintiffs further allege that Defendant Vine harassed and intimidated the Quiroz family by instructing law enforcement personnel to pass by and around the Quiroz residence in marked patrol units. *Id.* at 10, ¶ 28. Finally, Plaintiffs allege that Defendant Vine allowed various body camera footage to be deleted. *Id.*, ¶ 29.

Regarding Defendant Terri Hughes, a former Criminal Investigation Division Lieutenant employed by the Dayton Police Department, Plaintiffs allege that Hughes knowingly submitted an incomplete intake case file to Defendant Poston's office. *Id.* at 13, ¶ 40. Specifically, Defendant Hughes never interviewed Defendant White, other passengers in the vehicle, witnesses from the crash scene, or witnesses from the school. *Id.*

Regarding Defendant Kristen Seibert, Dayton Police Sergeant, Plaintiffs allege that Seibert was untruthful about photos of the vehicle and the accident scene, falsified witness statements, obstructed justice, and that Seibert's body camera footage during the incident was deleted. *Id.* at 15–16.

Plaintiffs filed their original *Complaint* on July 17, 2023. Doc. No. 1. Plaintiffs subsequently filed an *Amended Complaint* on October 12, 2023, which added several new defendants.[1] Doc. No. 4. Plaintiffs ultimately filed their *Corrected Second Amended Complaint* on November 21, 2023. Doc. No. 18. The Liberty County Defendants filed their *Motion to Dismiss* on December 1, 2023. Doc. No. 20. The Allegiance Defendants, Dayton Defendants, and City of Liberty Defendants filed their respective *Motions to Dismiss* (Doc. Nos. 21, 23, 25) on December 5, 2023. On December 15, 2023, Plaintiffs filed a *Response* to the Liberty County Defendants' *Motion to Dismiss*. Doc. No. 25. On December 19, 2023, Plaintiffs filed a *Response* to the other three *Motions to Dismiss*. Doc. No. 27. The Liberty County Defendants, Allegiance Defendants, Dayton Defendants, and City of Liberty Defendants all filed *Replies*. Doc. Nos. 30, 33, 38, 39.

Defendants Ramji Law Group and Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan Skye White, Union Pacific Railroad Company, and Eduardo Hernandez have not answered or otherwise responded to Plaintiffs' *Corrected Second Amended Complaint* (Doc. No. 18).

II. Legal Standards

A. Rule 12(b)(1) Motion to Dismiss

A motion to dismiss filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenges the subject-matter jurisdiction of a federal district court. *See* FED R. CIV. P. 12(b)(1). The court "must presume that a suit lies outside [its] limited jurisdiction, and the burden of

[1] The *First Amended Complaint* added Defendants Wadzeck, the City of Dayton Fire Department, Green, Harkness, Poston, Saldana, the City of Liberty, Grimes, Allegiance Mobile Health Medical Service, Smith, Ramji Law Group, Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, White, Nissan North America, and Union Pacific Railroad Company. Doc. No. 4 at 1. These defendants are also named in the *Second Corrected Amended Complaint* (Doc. No. 18), which is the operative complaint.

establishing federal jurisdiction rests on the party seeking the federal forum." *Gonzalez v. Limon*, 926 F.3d 186, 188 (5th Cir. 2019). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Walmart, Inc. v. U.S. Department of Justice*, 21 F.4th 300, 307 (5th Cir. 2021) (quoting *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998)). A court must address a jurisdictional challenge before addressing a challenge on the merits under Rule 12(b)(6). *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

When ruling on a 12(b)(1) motion, a court may consider "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *In re S. Recycling, L.L.C.*, 982 F.3d 374, 379 (5th Cir. 2020). "[A] motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle the plaintiff to relief." *Ramming*, 281 F.3d at 161.

B. Rule 12(b)(6) Motion to Dismiss

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plaintiffs must state enough facts to "nudge their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. When assessing a motion to dismiss under this rule, the court must accept as true all

well-pleaded facts in the plaintiffs' complaint and view those facts in the light most favorable to the plaintiffs. *Allen v. Hays*, 65 F.4th 736, 743 (5th Cir. 2023). However, "[c]onclusory allegations, unwarranted factual inferences, or legal conclusions are not accepted as true." *Id.* (internal quotations omitted).

III. Liberty County Defendants' Motion to Dismiss

The Liberty County Defendants move to dismiss Plaintiffs' claims against them because the court lacks subject matter jurisdiction over Plaintiffs' claims. Doc. No. 20 at 8. Defendant Harkness is the District Attorney of Liberty County, and Defendants Poston and Saldana are Liberty County assistant attorneys. *Id.* at 3. The Liberty County defendants contend that they are entitled to absolute prosecutorial immunity from Plaintiffs' federal and state law claims against them in their individual capacities, and from Plaintiffs' state law claims against them in their official capacities. *Id.* at 8. Additionally, they contend that they are entitled to Eleventh Amendment immunity from Plaintiffs' federal law claims against them in their official capacities. *Id.* The undersigned agrees.

At the outset, the undersigned notes that Plaintiffs sue the Liberty County defendants in their official capacities. Doc. No. 18 at ¶¶ 54, 58, 82. The undersigned discerns no individual capacity claims. Additionally, it seems that Plaintiffs attempt to assert federal law claims, but it is unclear whether Plaintiffs assert state law claims as well. For the sake of thoroughness, the undersigned will assume that Plaintiffs attempt to assert claims under both federal and state law against the Liberty County defendants in their official capacities. To the extent Plaintiffs assert any claims at all against the Liberty County defendants in their individual capacities, such claims are vague, conclusory, and difficult to decipher. Despite the poor pleading of Plaintiffs' allegations

in the *Corrected Second Amended Complaint* (Doc. No. 18), the undersigned discerns several potential claims.

Plaintiffs allege that Harkness "discriminated" against Madelyn Quiroz and denied her equal protection and due process of law. Doc. No. 18 at 18, ¶¶ 54–55. It seems that these claims arise from Harkness' alleged refusal to pursue charges against former Dayton Police Lieutenant Terri Hughes related to Hughes' alleged faulty investigation of the underlying car accident. *Id.* Plaintiffs allege that Poston and Saldana "discriminated" against Madelyn Quiroz and deprived her of equal protection and due process of law. *Id.* at 19, ¶¶ 58–59, 82–83. These claims apparently arise from Poston and Saldana's alleged "[refusal] to pursue claims against White suspects on behalf of Hispanic females." *Id.* In sum, it appears there are three potential claims asserted against the Liberty County defendants in their official capacities: (1) some type of vague discrimination claim; (2) an equal protection claim; and (3) a due process claim.

The Liberty County Defendants are entitled to Eleventh Amendment immunity from all of Plaintiffs' claims brought against them in their official capacities. Plaintiffs' discrimination, equal protection, and due process claims against the Liberty County Defendants arise from the Defendants' alleged decisions not to file criminal charges against certain individuals. These decisions are unquestionably prosecutorial decisions that are entitled to the protection of Eleventh Amendment immunity. *See Quinn v. Roach*, 326 F. App'x 280, 292 (5th Cir. 2009) (granting Eleventh Amendment immunity to district attorneys and assistant district attorneys sued in their official capacities for claims relating to decisions about whether and when to bring charges); *see also Moreno v. Donna Indep. Sch. Dist.*, 589 F. App'x 677, 680 (5th Cir. 2014) (finding that the Eleventh Amendment shields district attorney from official-capacity liability). Accordingly,

Plaintiffs' claims against the Liberty County Defendants in their official capacities must be dismissed.

The undersigned discerns no federal or state law claims brought against the Liberty County Defendants in their individual capacities. However, to the extent any such claims might be alleged, the Liberty County Defendants are entitled to absolute immunity from them. It is well-settled in the Fifth Circuit "that district attorneys and assistant district attorneys in Texas are agents of the state when acting in their prosecutorial capacities." *Quinn*, 326 F. App'x at 292. As such, prosecutors are absolutely immune from liability with respect to actions taken by them while representing the government in judicial proceedings. *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976). Actions taken by prosecutors in preparing for the initiation of judicial proceedings or for trial and which occur during their role as an advocate for the government are entitled to the protections of absolute immunity. *Boyd v. Biggers*, 31 F.3d 279, 285 (5th Cir. 1994).

Plaintiffs' discrimination, equal protection, and due process claims against the Liberty County Defendants arise from the Defendants' alleged decisions not to file certain criminal charges. "The decision to file or not file criminal charges is protected by prosecutorial immunity." *Quinn*, 326 F. App'x at 292. Accordingly, the Liberty County Defendants are entitled to prosecutorial immunity from any of Plaintiffs' claims brought against them in their individual capacities under both federal and state law.

Plaintiffs fail to plead facts that defeat Eleventh Amendment immunity or absolute prosecutorial immunity, which warrants dismissal of their claims against the Liberty County Defendants. Accordingly, all of Plaintiffs' claims against the Liberty County Defendants should be dismissed.

IV. The Allegiance Defendants' Motion to Dismiss

Defendants Allegiance Mobile Health and Steve Smith (collectively, "the Allegiance Defendants") move to dismiss Plaintiffs' claims against them because (1) Plaintiffs' claims are barred by applicable statutes of limitation, (2) Plaintiffs fail to allege that the Allegiance Defendants are state actors, and (3) Plaintiffs have simply failed to state a plausible claim against them. Doc. No. 21 at 1–2. The undersigned finds that all of Plaintiffs' claims against the Allegiance Defendants are barred by the statute of limitations.

While Plaintiffs offer somewhat detailed factual allegations against the Allegiance Defendants regarding their response to the accident, the causes of action alleged are vague and conclusory. Doc. No. 18 at 25–26. The undersigned discerns several possible claims against the Allegiance Defendants: a vague claim for "discrimination," negligence, and violations of due process, equal protection, and the Fourth Amendment asserted pursuant to § 1983. *Id.* Specifically, Plaintiffs allege that "Allegiance Mobile Health Emergency Medical Service discriminated against Madelyn Quiroz and denied Madelyn Quiroz life, liberty and property in the pursuit of happiness and he also denied Madelyn Quiroz equal protection of the law." *Id.* at 25, ¶ 106. Additionally, Plaintiffs allege "Allegiance negligently trained and hired Defendant Smith, and the other EMS workers L.F. Johnothon, Elizabeth Alvarez, and Katelyn Grimes."[2] *Id.* at 26, ¶ 108. Finally, Plaintiffs allege that "[a]fter Madelyn was severely injured causing the delay and denial of her medical care in violation of her fourth amendment rights as well as constituting medical negligence." *Id.*, ¶ 110.

Under Texas law, the limitations period for a negligence action is two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a); *Ledford v. Keen*, 9 F.4th 335, 338 (5th Cir. 2021); *Schlumberger*

[2] The undersigned notes that L.F. Johnothon and Elizabeth Alvarez are not parties to this lawsuit and are not identified anywhere else in the operative complaint. *See generally* Doc. No. 18.

Tech. Corp. v. Pasko, 544 S.W.3d 830, 834 (Tex. 2018). Once a defendant's wrongful conduct causes a legal injury, "the injured party's claims based on that wrongful conduct accrue—and the limitations period begins to run—even if (1) the claimant does not yet know that a legal injury has occurred, (2) the claimant has not yet experienced, or does not yet know the full extent of, the legal injury, (3) the claimant does not yet know the specific cause of the injury or the party responsible for it, (4) the wrongful conduct later causes additional legal injuries, or (5) the claimant has not yet sustained or cannot yet ascertain any or all of the damages resulting from the legal injuries." *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 814 (Tex. 2021).

Regarding § 1983 claims, because no federal statute specifies a limitation period for § 1983 suits, federal law borrows the forum state's general personal injury limitation period. *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Heilman v. City of Beaumont*, 638 F. App'x 363, 366 (5th Cir. 2016). In Texas, that statute of limitations period is two years. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a); *see also Hitt v. Connell*, 301 F.3d 240, 246 (5th Cir. 2002). In addition to the limitations period, courts apply the forum state's tolling principles. *Walker v. Epps*, 550 F.3d 407, 415 (5th Cir. 2008). Texas applies equitable tolling sparingly, looking to whether a plaintiff has diligently pursued his or her rights; litigants cannot use the doctrine "to avoid the consequences of their own negligence." *Hand v. Stevens Transp., Inc. Emp. Benefit Plan*, 83 S.W.3d 286, 293 (Tex. App.—Dallas 2002, no pet.).

Negligence and § 1983 claims have the same two-year limitations period, so the undersigned will analyze these claims together. The undersigned finds that Plaintiffs' negligence and § 1983 claims against the Allegiance Defendants are barred by the applicable statutes of limitation. The accident that forms the basis of this lawsuit occurred on January 23, 2020. Doc. No. 18 at 4, ¶ 1. According to Plaintiffs, Madelyn Quiroz turned 18 on July 18, 2021. *Id.*

However, Plaintiffs did not file suit against the Allegiant Defendants until October 12, 2023, when they filed their *First Amended Complaint* (Doc. No. 4). The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Accordingly, Plaintiffs' negligence and § 1983 claims against the Allegiance Defendants are barred by the statute of limitations.

Despite the clear applicability of the statute of limitations, Plaintiffs "seek to plead any applicable tolling provisions against any defendant that might assert [sic]." Doc. No. 18 at 51, ¶ 237. Plaintiffs fail to demonstrate that the statute of limitations should be tolled. Under Texas law, there are two doctrines that may defer a claim's accrual date: (1) the discovery rule and (2) fraudulent concealment. *Valdez v. Hollenbeck*, 465 S.W.3d 217, 229 (Tex. 2015). The discovery rule is a "narrow exception to the legal injury rule that defers accrual of a cause of action until the plaintiff knew or, exercising reasonable diligence, should have known of the facts giving rise to the cause of action." *Marcus & Millichap Real Est. Inv. Servs. of Nevada, Inc. v. Triex Texas Holdings, LLC*, 659 S.W.3d 456, 461 (Tex. 2023) (internal quotations omitted). The discovery rule applies "when the injury is by its nature inherently undiscoverable," which means "unlikely to be discovered within the prescribed limitations period despite due diligence." *Id.* Plaintiffs fail to allege any facts in their *Corrected Second Amended Complaint* (Doc. No. 18) showing that Madelyn Quiroz's injuries were inherently undiscoverable. Accordingly, the discovery rule is inapplicable here.

Under the doctrine of fraudulent concealment, "when a defendant has fraudulently concealed the facts forming the basis of the plaintiff's claim, limitations does not begin to run until the [plaintiff], using reasonable diligence, discovered or should have discovered the injury." *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 817 (Tex. 2021).

Plaintiffs fail to allege any facts showing that the Allegiance Defendants fraudulently concealed facts related to Madelyn Quiroz's injuries. Accordingly, fraudulent concealment is also inapplicable here.

In their *Response*, Plaintiffs contend that their claims against the Allegiance Defendants relate back to the original *Complaint* (Doc. No. 1) under TEX. CIV. PRAC. & REM. CODE § 16.068, and therefore, are not barred by the statute of limitations. Doc. No. 27 at 8–10. Specifically, Plaintiffs contend that the doctrines of misnomer and misidentification apply and toll the statute of limitations because "Plaintiff was not aware it was Allegiance, not City of Dayton, who was responsible for the emergency medical services." *Id.* at 10. The Allegiance Defendants are entirely new parties named in Plaintiffs' *First Amended Complaint* (Doc. No. 4) that were not named in their original *Complaint* (Doc. No. 1). The City of Dayton, who Plaintiffs contend is the misidentified/misnamed party, was a defendant in the original *Complaint* (Doc. No. 1) and is *still* a defendant in the *First Amended Complaint* (Doc. No. 4). As explained below, the undersigned finds that neither misidentification nor misnomer apply here, and Plaintiffs' claims against the Allegiance Defendants do not relate back to the claims in their original *Complaint* (Doc. No. 1).

Whether an amended pleading in federal court relates back to a prior pleading is a procedural question that invokes FED. R. CIV. P. 15(c). *Taylor v. Trevino*, 569 F. Supp. 3d 414, 430 (N.D. Tex. 2021). Rule 15(c)(1)(A) provides that "[a]n amendment to a pleading relates back to the date of the original pleading when . . . the law that provides the applicable statute of limitations allows relation back." FED. R. CIV. P. 15(c)(1)(A). Here, Texas law provides the applicable statutes of limitation for negligence and § 1983 claims. Accordingly, the court must examine the relation back statute under Texas law, which provides that:

> [i]f a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a

> subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence.

TEX. CIV. PRAC. & REM. CODE § 16.068.

The Fifth Circuit has construed Rule 15(c)(1)(A) to mean that a court should consider both Rule 15(c) and § 16.068, and "whichever is more forgiving and works to save the claim is the one that controls." *Taylor*, 569 F. Supp. 3d at 431 (citing *Schirle v. Sokudo USA, L.L.C.*, 484 F. App'x 893, 901–02 (5th Cir. 2012) (per curiam)).

Turning first to § 16.068, "[o]rdinarily, an amended pleading adding a new party does not relate back to the original pleading." *Univ. of Tex. Health Sci. Ctr. at San Antonio v. Bailey*, 332 S.W.3d 395, 400 (Tex. 2011); *Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 121 (Tex. 2004). In certain circumstances, a pleading involving misnomer or misidentification can relate back. Misidentification "arises when two separate legal entities exist and a plaintiff mistakenly sues an entity with a name similar to that of the correct entity." *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2009). However, "[e]quitable tolling may be available in a misidentification case only if there are two separate, but related, entities that use a similar trade name and the correct entity had notice of the suit and was not misled or disadvantaged by the mistake." *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 670 S.W.3d 622, 628 n.3 (Tex. 2023). That is not the case here. The Allegiance Defendants and the City of Dayton do not have similar names, and Plaintiffs have not shown that the Allegiance Defendants had notice of this suit when the original *Complaint* (Doc. No. 1) was filed. Accordingly, the misidentification doctrine does not apply and the statute of limitations cannot be tolled on this basis.

Additionally, "[a] misnomer occurs when a party misnames itself or another party, but the correct parties are involved." *Houston Orthopaedic*, 295 S.W.3d at 325. That is not the case here

either. Allegiance Mobile Health, a private emergency medical transport company, is a wholly distinct entity from the City of Dayton, a municipality, and was never involved in this case prior to the filing of the *First Amended Complaint* (Doc. No. 4). Accordingly, misnomer does not apply and the statute of limitations cannot be tolled on this basis.

Turning to FED. R. CIV. P. 15(c), Plaintiffs cannot establish that the statute of limitations should be tolled under the Federal Rules of Civil Procedure either. "Rule 15(c) is meant to allow an amendment changing the name of a party to relate back to the original complaint *only if the change is the result of an error, such as a misnomer or misidentification.*" *Ultraflo Corp. v. Pelican Tank Parts, Inc.*, 926 F. Supp. 2d 935, 947 (S.D. Tex. 2013) (citing *Miller v. Mancuso*, 388 F. App'x. 389, 391 (5th Cir. 2010)) (emphasis in original). As discussed above, Plaintiffs have not established either a misnomer or misidentification of the Allegiance Defendants. Rather, Plaintiffs simply allege that "Plaintiff was not aware it was Allegiance, not City of Dayton, who was responsible for the emergency medical services." Doc. No. 27 at 9–10. This is not enough to establish a misidentification or misnomer sufficient to invoke the relation back doctrine. *See Ultraflo*, 926 F. Supp. 2d at 947 (stating that "[a] failure to name the correct defendant due to a lack of knowledge of the proper party is not a mistake and will not allow a plaintiff to avail itself of the relation back doctrine").

The undersigned concludes that Plaintiffs' negligence claims and constitutional claims asserted against the Allegiance Defendants under § 1983 are time barred by the applicable statutes of limitations. Accordingly, all such claims against the Allegiance Defendants should be dismissed.

Finally, regarding Plaintiffs' conclusory assertion of a "discrimination" claim, this claim should be dismissed because Plaintiff fails to state a claim upon which relief can be granted. To

survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678. Plaintiffs state no facts at all showing that the Allegiance Defendants discriminated against her and fail to allege any specific cause of action for discrimination. "Conclusory allegations, unwarranted factual inferences, or legal conclusions are not accepted as true." *Allen*, 65 F.4th at 743. Accordingly, any "discrimination" claim against the Allegiance Defendants should be dismissed.

In sum, the undersigned recommends granting the Allegiance Defendants' instant *Motion to Dismiss* (Doc. No. 21).

V. Defendants City of Liberty, Texas and Katelyn Grimes' Motion to Dismiss

Defendants City of Liberty, Texas and its official Katelyn Grimes (collectively, "the Liberty Defendants") move to dismiss Plaintiffs' claims against them because Plaintiffs' claims (1) are barred by applicable statutes of limitation, (2) Plaintiffs fail to plead causes of action in support of their § 1983 claims, and (3) the Liberty Defendants are entitled to qualified immunity from suit. Doc. No. 23 at 3–4. As a threshold matter, the undersigned finds that Plaintiffs have abandoned all claims against the City of Liberty itself. Though the City of Liberty is named in the caption of the *Corrected Second Amended Complaint*, there are no cognizable causes of action pleaded against the city anywhere in the operative complaint. *See generally* Doc. No. 18. Accordingly, the Liberty Defendants' instant motion should be granted with respect to the City of Liberty on this basis.

As is par for the course with Plaintiffs' operative complaint, the allegations against Defendant Grimes are extremely sparse and conclusory. Plaintiffs allege that Defendant Grimes "discriminated against Madelyn Quiroz and denied Madelyn Quiroz life, liberty, and property in the pursuit of happiness and [she] also denied Madelyn Quiroz equal protection of the law." Doc.

No. 18 at 24–25, ¶ 101. From this, the undersigned discerns a vague "discrimination" claim and violations of Madelyn Quiroz's due process and equal protection rights pursuant to § 1983.

The undersigned finds that all of Plaintiffs' § 1983 claims against Defendant Grimes are barred by the statute of limitations. As discussed above, the statute of limitations for § 1983 claims in Texas is two years. *See Hitt*, 301 F.3d at 246; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). Plaintiffs did not file suit against Defendant Grimes until October 12, 2023 when they filed their *First Amended Complaint*. Doc. No. 4 at 28, ¶ 97. Defendant Grimes' name appears nowhere in the original *Complaint*. *See generally* Doc. No. 1. The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Thus, Plaintiffs' § 1983 claims against Defendant Grimes are barred by the statute of limitations.

In their *Response*, Plaintiffs contend, in conclusory fashion, that the claims against Defendant Grimes in the operative complaint relate back to the original complaint. Doc. No. 27 at 13. Plaintiffs allege no facts, other than this conclusory assertion, that the claims against Grimes relate back to the original *Complaint* (Doc. No. 1). Accordingly, this argument is without merit.

Regarding any possible discrimination claim, this claim fails for the same reasons Plaintiffs' discrimination claim against the Allegiance Defendants fails: Plaintiffs state no facts at all showing that the Liberty Defendants discriminated against her and fail to allege any specific cause of action for discrimination. Plaintiffs fail to "state a claim to relief [for discrimination] that is plausible on its face." *Iqbal*, 556 U.S. at 678. Accordingly, any "discrimination" claim against the Allegiance Defendants should be dismissed. In sum, the undersigned recommends granting the Liberty Defendants' instant motion to dismiss (Doc. No. 23).

VI. City of Dayton Defendants' Motion to Dismiss

Defendants City of Dayton, The City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, and Murphy Green (collectively, "the Dayton Defendants") move to dismiss Plaintiffs' claims against them for several reasons. Doc. No. 24 at 2–3. First, they contend that the claims against the City of Dayton Fire Department, Caroline Wadzeck, Kristen Seibert, and Murphy Green are barred by applicable statutes of limitation. *Id.* at 7. Second, they contend that the City of Dayton Fire Department should be dismissed because it is not a proper jural defendant. *Id.* at 8. Third, they contend that the claims against Defendants Wadzeck, Melancon, Vine, Coleman, Hughes, Seibert, and Green are duplicative of the claims against the City of Dayton, which warrants dismissal. *Id.* at 9. Finally, they contend that Plaintiffs fail to sufficiently plead facts supporting a *Monell* liability claim against Defendant City of Dayton. *Id.* at 9–10. The undersigned will consider each contention in turn.

A. Statutes of Limitation

The undersigned discerns equal protection and due process claims asserted against Defendants City of Dayton Fire Department, Wadzeck, Seibert, and Green pursuant to § 1983. Doc. No. 18 at ¶¶ 14, 47, 51. Thus, the statute of limitation rules for § 1983 claims discussed above apply to these claims.

The undersigned finds that the limitations period under Texas law bars Plaintiffs' § 1983 claims against Defendants City of Dayton Fire Department, Wadzeck, and Green. Under Texas law, the statute of limitations for § 1983 claims is two years. *See Hitt*, 301 F.3d at 246; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). Plaintiffs did not file suit against Defendants City of Dayton Fire Department, Wadzeck, and Green until October 12, 2023, when they filed their *First*

Amended Complaint. Doc. No. 4 at 28, ¶ 97. The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Accordingly, Plaintiffs' § 1983 claims against Defendants City of Dayton Fire Department, Wadzeck, and Green are barred by the statute of limitations.

The undersigned notes that Plaintiffs named Defendant Seibert as a defendant in their *First Amended Complaint*. Doc. No. 4 at 16–17. Despite the vague pleading of allegations against Defendant Seibert, the undersigned is reluctant to dismiss the claims against her on statute of limitations grounds because the *First Amended Complaint* complies with the relevant statute of limitations. Thus, the undersigned will consider the claims against Defendant Seibert in conjunction with the other official capacity claims asserted against the Dayton Defendants in sub-section VI.C.

In sum, the undersigned finds that all of Plaintiffs' claims against Defendants City of Dayton Fire Department, Wadzeck, and Green are barred by the statute of limitations, and accordingly, all such claims should be dismissed.

B. Non-Jural Entity

Though the statute of limitations bars Plaintiffs' claims against the City of Dayton Fire Department, Plaintiffs' claims should also be dismissed because the City of Dayton Fire Department is a non-jural entity that is incapable of being sued. To sue a city department in Texas, the department "must enjoy a separate legal existence," which means that it must be "a separate and distinct corporate entity." *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991) (internal citations omitted). Thus, unless the "true political entity" has explicitly granted "the servient agency with jural authority," the servient agency may not sue nor be sued. *Id.* Plaintiffs fail to allege any facts demonstrating that the City of Dayton has granted the City of Dayton Fire

Department jural authority as a separate entity. Accordingly, any claims Plaintiffs have against the City of Dayton Fire Department should be dismissed on this basis as well. *See*, *e.g.*, *Hughes v. City of Schertz*, 2007 WL 3128511, at *1–2 (W.D. Tex. Sept. 28, 2007) (dismissing a city's fire department that was sued together with the city, which did not explicitly grant jural authority to the fire department).

C. Redundant Claims

The undersigned discerns vague and conclusory discrimination, equal protection, and due process claims asserted against Defendants Seibert, Melancon, Vine, Coleman, and Hughes, all of whom are sued in their official capacities. Doc. No. 18 at ⁋⁋ 17, 21, 32, 39, 47. "[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent." *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)) (internal quotations omitted). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Graham*, 473 U.S. at 166. "It is *not* a suit against the official personally, for the real party in interest is the entity." *Id.* (emphasis in original).

Because all these defendants are City of Dayton officials sued in their official capacities and the City of Dayton is a co-defendant, all claims against these defendants should be dismissed as redundant of Plaintiffs' claims against the City of Dayton. *See*, *e.g.*, *Marceaux v. Lafayette City-Par. Consol. Gov't*, 614 F. App'x 705, 708 (5th Cir. 2015) (affirming dismissal of official capacity claims against municipal officers when the municipality was also a defendant); *Chavez v. Alvarado*, 550 F. Supp. 3d 439, 450 (S.D. Tex. 2021) (dismissing claims against individual police officers in their official capacities as redundant of plaintiffs' claims against the City of Houston).

Accordingly, Plaintiffs' claims against Defendants Seibert, Melancon, Vine, Coleman, and Hughes should be dismissed.

D. *Monell* Liability

Finally, the undersigned turns to Plaintiffs' *Monell* liability claims against Defendant City of Dayton. Plaintiffs assert a variety of vague allegations against the City of Dayton in their *Second Corrected Amended Complaint*, including that the City of Dayton was untruthful to the Attorney General of Texas' office, denied proper hold of the wrecked car, failed to conduct a preliminary scene investigation, failed to procure medical records, failed to recognize the seriousness of the injuries resulting from the crash, failed to collect statements from witnesses after the accident, and intentionally suppressed a criminal investigation into Morgan White, among others. Doc. No. 18 at 4, ¶¶ 4–12. The City of Dayton moves to dismiss Plaintiffs' claims because Plaintiffs fail to state any allegations that an official city policy or custom was the moving force behind any alleged violation of Plaintiffs' constitutional rights. Doc. No. 24 at 10.

42 U.S.C. § 1983 "makes liable '[e]very person' who, under color of state law, violates federal constitutional rights." *Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 622 (5th Cir. 2018). To assert a *Monell* liability claim under 42 U.S.C. § 1983 against the City of Dayton, Plaintiffs must allege three elements: (1) a policymaker; (2) an official policy; and (3) a violation of a constitutional right whose "moving force" is the policy or custom. *Alvarez v. City of Brownsville*, 904 F.3d 382, 389 (5th Cir. 2018); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978).

There are three ways to establish a "policy" under *Monell*:

> First, a plaintiff can show written policy statements, ordinances, or regulations.[] Second, a plaintiff can show a widespread practice that is so common and well-settled as to constitute custom that fairly represents municipal policy.[] Third, even a single decision may constitute municipal policy . . . when the official or entity

> possessing final policymaking authority for an action performs the specific act that forms the basis of the § 1983 claim.[]

Webb v. Town of Saint Joseph, 925 F.3d 209, 215 (5th Cir. 2019) (internal footnotes, citations, and quotation marks omitted).

Plaintiffs fail to allege any facts showing (1) the existence of written policy statements, ordinances, or regulations, (2) a widespread practice, or (3) a single decision by an official that possesses final policymaking authority sufficient to establish a "policy" for *Monell* liability purposes. Moreover, even if Plaintiffs' vague, conclusory allegations somehow established the existence of a policy, they have alleged no facts showing that such a policy was the moving force behind a violation of any of their constitutional rights. Accordingly, because Plaintiffs fail to plead facts establishing these essential elements of their *Monell* claims, their claims against the City of Dayton fail to state a claim for *Monell* liability and should be dismissed.

In sum, the undersigned recommends granting the Dayton Defendants' instant *Motion to Dismiss* (Doc. No. 24).

VII. Claims Against Non-Responding Defendants

Additionally, Plaintiffs assert vague, conclusory allegations against the Ramji Law Group and Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Union Pacific Railroad Company in their *Corrected Second Amended Complaint*. Doc. No. 18. None of these defendants have answered or otherwise responded. However, where a defending party establishes that the plaintiff has no cause of action, the same defense generally inures to the benefit of a defaulting defendant. *See Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir. 2001); *Young v. Isola, Mississippi, By & Through Miller*, 708 F. App'x 152, 155 (5th Cir. 2017); *McCarty v. Zapata County*, 243 F. App'x 792, 794 (5th Cir. 2007); *Lopez v. Cain*, No. 6:22-CV-00148-JDK, 2023 WL

7030184, at *8 (E.D. Tex. Sept. 19, 2023), *report and recommendation adopted*, No. 6:22-CV-148-JDK-JDL, 2023 WL 7027505 (E.D. Tex. Oct. 25, 2023).

Plaintiffs fail to plead sufficient facts to establish a cognizable cause of action against any of these defendants. Defendants Ramji Law Group and Adam Ramji are simply named in the caption of the complaint and Plaintiffs do not allege a single cause of action against them, nor even mention them anywhere else in the operative complaint. Doc. No. 18 at 1. Thus, Plaintiffs fail to allege any claim upon which relief can be granted, and accordingly, all of Plaintiffs' claims against these defendants should be dismissed. Regarding Defendant Morgan Skye White, while Plaintiffs discuss White extensively throughout the operative complaint, they fail to actually allege any cognizable causes of action against her. Accordingly, all of Plaintiffs' claims against Defendant White should be dismissed.

Regarding Defendants Jamey Wayne Bice and Stephanie Lee Blum Bice, Plaintiffs vaguely allege, in conclusory fashion, that these defendants obstructed justice and interfered with a criminal investigation. Doc. No. 18 at 28, ¶¶ 120–25. These allegations do not sufficiently state a cognizable claim upon which relief can be granted. Accordingly, all of Plaintiffs' claims against these defendants should be dismissed. Finally, Plaintiffs allege the same vague constitutional claims under § 1983 against Defendant Union Pacific Railroad as they did against the Dayton Defendants, namely that Union Pacific violated Madelyn Quiroz's due process and equal protection rights. Doc. No. 18 at 31. Plaintiffs have alleged no facts showing that Union Pacific was a state actor, and thus, Plaintiffs cannot establish any of their § 1983 claims against it. *See Yeager v. City of McGregor*, 980 F.2d 337, 338 (5th Cir. 1993) (noting that "[w]here there is no state action, no section 1983 constitutional claim exists"). Accordingly, all of Plaintiffs' claims against Union Pacific should be dismissed.

VIII. Remaining State Law Claims

The only Defendant not yet addressed in this Report is Defendant Eduardo Hernandez. Plaintiffs allege only a state law negligence claim against Defendant Hernandez. Doc. No. 18 at 45, ¶¶ 219–31. Because the undersigned recommends dismissal of all of Plaintiffs' federal claims, no federal question remains before the court. However, the court is not divested of jurisdiction based on this alone—the court must exercise its discretion whether to exercise supplemental jurisdiction over Taylor's state law claims under the Texas Constitution. *See* 28 U.S.C. § 1367(c)(3) (stating that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . (3) the district court has dismissed all claims over which it has original jurisdiction"). When a court dismisses all federal claims prior to trial, the general rule is to dismiss any pendent state law claims. *Watson v. City of Allen, Texas*, 821 F.3d 634, 642 (5th Cir. 2016). However, the dismissal of pendent claims should be without prejudice so that Plaintiffs may refile their claims against Defendant Hernandez in the appropriate state court. *Univ. of Texas Sys. v. Alliantgroup LP*, 400 F. Supp. 3d 610, 619 (S.D. Tex. 2019) (citing *Bass v. Parkwood Hosp.*, 180 F.3d 234, 246 (5th Cir. 1999)). Accordingly, all of Plaintiffs' claims against Defendant Hernandez should be dismissed without prejudice.

IX. Conclusion

The undersigned concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Jennifer Bergman Harkness, Matthew Poston, and Matthew Saldana. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Allegiance Mobile Health and Steve Smith.

Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants the City of Liberty, Texas and its official Katelyn Grimes. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 23) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants City of Dayton, The City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, and Murphy Green. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 24) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Ramji Law Group and Adam Ramji, Morgan Skye White, Jamey Wayne Bice, Stephanie Lee Blum Bice, and Union Pacific Railroad Company. Accordingly, any claims against these defendants should be **DISMISSED.**

Finally, the undersigned recommends that Plaintiffs' state law claims against Defendant Eduardo Hernandez should be **DISMISSED WITHOUT PREJUDICE.**

X. Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within 14 days after being served with a copy of this Report, and (4) be no more than eight (8) pages in length. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. TEX.

CIV. R. CV-72(c). A party who objects to this Report is entitled to a *de novo* determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within 14 days of being served with a copy of this Report, bars that party from: (1) entitlement to *de novo* review by the United States District Judge of the findings of fact and conclusions of law, and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED this 30th day of July, 2024.

Zack Hawthorn
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MADELYN MARINA QUIROZ; MARINA NAOMI HERNANDEZ QUIROZ,

Plaintiffs,

vs.

EDUARDO HERNANDEZ; CITY OF DAYTON; THEO MELANCON, CITY MANAGER; FNU DICKENSON, CITY MANAGER; ROBERT VINE, CHIEF; JOHN D. COLEMAN, DAYTON POLICE CAPTAIN; TERRI HUGHES, CID LT.; CAROLINE WEDZECK; KRISTEN SEIBERT; CITY OF DAYTON FIRE DEPARTMENT; MURPHY GREEN; JENNIFER BERGMAN HARKNESS, LIBERTY COUNTY DISTRICT ATTORNEY; MATTHEW POSTON, LIBERTY COUNTY ATTORNEY; MATTHEW SALDANA; CITY OF LIBERTY TEXAS; KATELYN GRIMES; ALLEGIANCE MOBILE HEALTH MEDICAL SERVICE; STEVE SMITH; RAMJI LAW GROUP; JAMEY WAYNE BICE; STEPHANIE LEE BLUM BICE; MORGAN SKYE WHITE; UNION PACIFIC RAILROAD COMPANY; ADAM RAMJI,

Defendants.

NO. 1:23-CV-00273-MAC-ZJH

REPORT AND RECOMMENDATION GRANTING MOTIONS TO DISMISS

This civil rights case is assigned to the Honorable Marcia A. Crone, United States District Judge. On July 17, 2023, Judge Crone referred this case to the undersigned United States Magistrate Judge for pretrial management. Doc. No. 1.

Pending before the court are four motions to dismiss:

(1) Defendants Liberty County District Attorney Jennifer Bergman Harkness, Liberty County Attorney Matthew Poston, and Liberty County Assistant Attorney Matthew Saldana's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20);

(2) Defendants Allegiance Mobile Health Medical Service and Steve Smith's *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21);

(3) City of Liberty Defendants' *Motion to Dismiss Plaintiffs' Second Amended Complaint* (Doc. No. 23); and

(4) City of Dayton Defendants' *Corrected Motion to Dismiss Plaintiffs' Corrected Second Amended Complaint* (Doc. No. 24).

At the outset, the undersigned notes that Plaintiffs' *Corrected Second Amended Complaint* (Doc. No. 18) is riddled with pleading deficiencies, difficult to decipher throughout, and replete with vague, conclusory allegations. Nonetheless, it appears that Plaintiffs generally assert various constitutional claims pursuant to 42 U.S.C. § 1983. Plaintiffs' claims arise from a serious car accident that occurred in Dayton, Texas that left Plaintiff Madelyn Quiroz as paraplegic. Plaintiff Marina Naomi Hernandez Quiroz is Madelyn Quiroz's mother. The instant motions to dismiss involve Plaintiffs' claims against local government defendants and a private ambulance company that responded to the accident. After careful review of the filings and applicable law, the undersigned recommends granting all four motions to dismiss.

I. Factual and Procedural Background

This case arises from a serious car accident that occurred in Dayton, Texas on January 23, 2020. Doc. No. 18 at 4. Plaintiff Madelyn Quiroz, then a 16-year-old, was the backseat passenger of a car driven by Defendant Morgan White. *Id.* at 3. On the afternoon in question, White was driving fast—between 86 and 96 miles per hour on a roadway with a speed limit of 30 miles per hour—to race with Defendant Eduardo Hernandez, who was driving a separate automobile. *Id.*

White ultimately lost control of her vehicle and the vehicle was launched airborne, traveling approximately 10 to 15 feet over a deep ditch and landing on railroad tracks. *Id.* Quiroz suffered life threatening injuries due to the crash, including internal bleeding, a partially collapsed lung, head trauma, a fractured nose, a bleeding spleen, a broken arm, a damaged radial nerve, broken ribs, a broken back, and a serious spinal cord injury. *Id.* As a result of the collision, Quiroz is now a paraplegic. *Id.* at 34, ¶ 149. Quiroz turned 18 years old on July 18, 2021. *Id.* at 4.

The instant motions to dismiss address Plaintiffs' claims against various local government and private ambulance company defendants. These claims relate to the medical treatment of Madelyn Quiroz at the scene of the accident and the subsequent investigation and evaluation of the accident by local authorities.

Defendant Harkness is the Liberty County District Attorney, Defendant Poston is a Liberty County Attorney, and Defendant Saldana is an Assistant Liberty County Attorney (collectively, "the Liberty County Defendants"). Doc. No. 18 at 18–23. All three are sued in their official capacities. *Id.* According to the facts alleged in the operative complaint, Defendant Harkness refused Marina Quiroz's attempts to meet with her for over two years, would not pursue charges against Defendant Hughes for apparently deleting body camera footage, and failed to investigate misconduct. *Id.* at 18, ¶ 55. Additionally, Plaintiffs allege that Defendant Poston failed to ensure that Dayton Police Department followed standard practices during the investigation of the incident and failed to submit allegedly new evidence that Defendant White was "getting high in the school restroom" minutes before getting behind the wheel prior to the accident. *Id.* at 19, ¶¶ 60–72. Plaintiffs allege that Defendant Saldana failed to submit the same alleged new evidence. *Id.* at 23.

Defendant Allegiance Mobile Health ("Allegiance") is an emergency medical service provider and Defendant Steve Smith was a paramedic employed by Allegiance (collectively, "the

Allegiance Defendants"). *Id.* at 25, ¶¶ 106–107. Defendant Smith was one of the paramedics who responded to the accident. *Id.* According to Plaintiffs, an argument occurred between Defendant Smith and Defendant Murphy Green, the City of Dayton Fire Chief, at the scene of the accident. *Id.*, ¶ 108. The argument concerned whether to contact Life Flight, a helicopter emergency medical transport service, in providing emergency treatment to Quiroz. *Id.*, ¶¶ 108, 138. This contributed to a 90-minute delay in activating Level 1 Trauma protocols. *Id.* Additionally, Plaintiffs allege that Defendant Smith failed to properly assess Quiroz's injuries, which also delayed her treatment and transport to a Level 1 Trauma Facility. *Id.* at 27, ¶ 118. Plaintiffs' allegations against Defendant Murphy Green, former Chief of the Dayton Volunteer Fire Department, are identical to the allegations against Defendant Smith. *Id.* at 17. Plaintiffs did not file suit against the Allegiance Defendants until October 12, 2023, when they filed their *First Amended Complaint* (Doc. No. 4).

Plaintiffs allege that Defendant Katelyn Grimes, a paramedic employed by Defendant City of Liberty (collectively, "the Liberty Defendants") prevented Flavio Quiroz, Madelyn Quiroz's father, from accessing her at the scene of the accident. *Id.* at 25, ¶ 102. Defendant Grimes is sued in her official capacity.

Finally, Plaintiffs sue a variety of defendants employed by the City of Dayton. All are sued in their official capacities. *Id.*, ¶¶ 13, 17, 20, 31, 39, 47, 51. Regarding the City of Dayton itself, Plaintiffs offer a litany of allegations: that the City was untruthful to the Texas Attorney General's office, denied proper hold of the wrecked automobile, failed to conduct a complete preliminary scene investigation, failed to procure medical records showing Defendant White's intoxication, failed to collect witness statements after the accident, suppressed the completion of a criminal investigation into Defendant White, deceived Marina Quiroz about the investigation, and failed to disclose which officer was assigned to investigate the accident. *Id.* at 4–6, ¶¶ 4–12.

Regarding Defendant Wadzeck, the former Mayor of Dayton, Plaintiffs allege that Wadzeck allowed her staff members to "fail the public" by disregarding and violating certain policies and procedures. *Id.* at 6, ¶ 14. Plaintiffs also allege that Wadzeck was involved in depriving Madelyn Quiroz of Crime Victim Compensation benefits. *Id.* Plaintiffs assert identical allegations against Defendant Theo Melancon, the former Dayton City Manager, and Defendant John Coleman, former police captain. *Id.* at 7, ¶ 17.

Plaintiffs also assert identical allegations against Defendant Robert Vine, former Deputy City Manager and Chief of Police. *Id.* at 8, ¶ 22. Additionally, Plaintiffs allege that Defendant Vine failed to properly supervise his staff, failed to follow up relevant leads related to the case, and failed to interview the other occupants of the car in which Quiroz was traveling during the accident. *Id.* at 9. Plaintiffs further allege that Defendant Vine harassed and intimidated the Quiroz family by instructing law enforcement personnel to pass by and around the Quiroz residence in marked patrol units. *Id.* at 10, ¶ 28. Finally, Plaintiffs allege that Defendant Vine allowed various body camera footage to be deleted. *Id.*, ¶ 29.

Regarding Defendant Terri Hughes, a former Criminal Investigation Division Lieutenant employed by the Dayton Police Department, Plaintiffs allege that Hughes knowingly submitted an incomplete intake case file to Defendant Poston's office. *Id.* at 13, ¶ 40. Specifically, Defendant Hughes never interviewed Defendant White, other passengers in the vehicle, witnesses from the crash scene, or witnesses from the school. *Id.*

Regarding Defendant Kristen Seibert, Dayton Police Sergeant, Plaintiffs allege that Seibert was untruthful about photos of the vehicle and the accident scene, falsified witness statements, obstructed justice, and that Seibert's body camera footage during the incident was deleted. *Id.* at 15–16.

Plaintiffs filed their original *Complaint* on July 17, 2023. Doc. No. 1. Plaintiffs subsequently filed an *Amended Complaint* on October 12, 2023, which added several new defendants.[1] Doc. No. 4. Plaintiffs ultimately filed their *Corrected Second Amended Complaint* on November 21, 2023. Doc. No. 18. The Liberty County Defendants filed their *Motion to Dismiss* on December 1, 2023. Doc. No. 20. The Allegiance Defendants, Dayton Defendants, and City of Liberty Defendants filed their respective *Motions to Dismiss* (Doc. Nos. 21, 23, 25) on December 5, 2023. On December 15, 2023, Plaintiffs filed a *Response* to the Liberty County Defendants' *Motion to Dismiss*. Doc. No. 25. On December 19, 2023, Plaintiffs filed a *Response* to the other three *Motions to Dismiss*. Doc. No. 27. The Liberty County Defendants, Allegiance Defendants, Dayton Defendants, and City of Liberty Defendants all filed *Replies*. Doc. Nos. 30, 33, 38, 39.

Defendants Ramji Law Group and Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan Skye White, Union Pacific Railroad Company, and Eduardo Hernandez have not answered or otherwise responded to Plaintiffs' *Corrected Second Amended Complaint* (Doc. No. 18).

II. Legal Standards

A. Rule 12(b)(1) Motion to Dismiss

A motion to dismiss filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenges the subject-matter jurisdiction of a federal district court. *See* FED R. CIV. P. 12(b)(1). The court "must presume that a suit lies outside [its] limited jurisdiction, and the burden of

[1] The *First Amended Complaint* added Defendants Wadzeck, the City of Dayton Fire Department, Green, Harkness, Poston, Saldana, the City of Liberty, Grimes, Allegiance Mobile Health Medical Service, Smith, Ramji Law Group, Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, White, Nissan North America, and Union Pacific Railroad Company. Doc. No. 4 at 1. These defendants are also named in the *Second Corrected Amended Complaint* (Doc. No. 18), which is the operative complaint.

establishing federal jurisdiction rests on the party seeking the federal forum." *Gonzalez v. Limon*, 926 F.3d 186, 188 (5th Cir. 2019). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Walmart, Inc. v. U.S. Department of Justice*, 21 F.4th 300, 307 (5th Cir. 2021) (quoting *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998)). A court must address a jurisdictional challenge before addressing a challenge on the merits under Rule 12(b)(6). *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

When ruling on a 12(b)(1) motion, a court may consider "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *In re S. Recycling, L.L.C.*, 982 F.3d 374, 379 (5th Cir. 2020). "[A] motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle the plaintiff to relief." *Ramming*, 281 F.3d at 161.

B. Rule 12(b)(6) Motion to Dismiss

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plaintiffs must state enough facts to "nudge their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. When assessing a motion to dismiss under this rule, the court must accept as true all

well-pleaded facts in the plaintiffs' complaint and view those facts in the light most favorable to the plaintiffs. *Allen v. Hays*, 65 F.4th 736, 743 (5th Cir. 2023). However, "[c]onclusory allegations, unwarranted factual inferences, or legal conclusions are not accepted as true." *Id.* (internal quotations omitted).

III. Liberty County Defendants' Motion to Dismiss

The Liberty County Defendants move to dismiss Plaintiffs' claims against them because the court lacks subject matter jurisdiction over Plaintiffs' claims. Doc. No. 20 at 8. Defendant Harkness is the District Attorney of Liberty County, and Defendants Poston and Saldana are Liberty County assistant attorneys. *Id.* at 3. The Liberty County defendants contend that they are entitled to absolute prosecutorial immunity from Plaintiffs' federal and state law claims against them in their individual capacities, and from Plaintiffs' state law claims against them in their official capacities. *Id.* at 8. Additionally, they contend that they are entitled to Eleventh Amendment immunity from Plaintiffs' federal law claims against them in their official capacities. *Id.* The undersigned agrees.

At the outset, the undersigned notes that Plaintiffs sue the Liberty County defendants in their official capacities. Doc. No. 18 at ¶¶ 54, 58, 82. The undersigned discerns no individual capacity claims. Additionally, it seems that Plaintiffs attempt to assert federal law claims, but it is unclear whether Plaintiffs assert state law claims as well. For the sake of thoroughness, the undersigned will assume that Plaintiffs attempt to assert claims under both federal and state law against the Liberty County defendants in their official capacities. To the extent Plaintiffs assert any claims at all against the Liberty County defendants in their individual capacities, such claims are vague, conclusory, and difficult to decipher. Despite the poor pleading of Plaintiffs' allegations

in the *Corrected Second Amended Complaint* (Doc. No. 18), the undersigned discerns several potential claims.

Plaintiffs allege that Harkness "discriminated" against Madelyn Quiroz and denied her equal protection and due process of law. Doc. No. 18 at 18, ¶¶ 54–55. It seems that these claims arise from Harkness' alleged refusal to pursue charges against former Dayton Police Lieutenant Terri Hughes related to Hughes' alleged faulty investigation of the underlying car accident. *Id.* Plaintiffs allege that Poston and Saldana "discriminated" against Madelyn Quiroz and deprived her of equal protection and due process of law. *Id.* at 19, ¶¶ 58–59, 82–83. These claims apparently arise from Poston and Saldana's alleged "[refusal] to pursue claims against White suspects on behalf of Hispanic females." *Id.* In sum, it appears there are three potential claims asserted against the Liberty County defendants in their official capacities: (1) some type of vague discrimination claim; (2) an equal protection claim; and (3) a due process claim.

The Liberty County Defendants are entitled to Eleventh Amendment immunity from all of Plaintiffs' claims brought against them in their official capacities. Plaintiffs' discrimination, equal protection, and due process claims against the Liberty County Defendants arise from the Defendants' alleged decisions not to file criminal charges against certain individuals. These decisions are unquestionably prosecutorial decisions that are entitled to the protection of Eleventh Amendment immunity. *See Quinn v. Roach*, 326 F. App'x 280, 292 (5th Cir. 2009) (granting Eleventh Amendment immunity to district attorneys and assistant district attorneys sued in their official capacities for claims relating to decisions about whether and when to bring charges); *see also Moreno v. Donna Indep. Sch. Dist.*, 589 F. App'x 677, 680 (5th Cir. 2014) (finding that the Eleventh Amendment shields district attorney from official-capacity liability). Accordingly,

Plaintiffs' claims against the Liberty County Defendants in their official capacities must be dismissed.

The undersigned discerns no federal or state law claims brought against the Liberty County Defendants in their individual capacities. However, to the extent any such claims might be alleged, the Liberty County Defendants are entitled to absolute immunity from them. It is well-settled in the Fifth Circuit "that district attorneys and assistant district attorneys in Texas are agents of the state when acting in their prosecutorial capacities." *Quinn*, 326 F. App'x at 292. As such, prosecutors are absolutely immune from liability with respect to actions taken by them while representing the government in judicial proceedings. *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976). Actions taken by prosecutors in preparing for the initiation of judicial proceedings or for trial and which occur during their role as an advocate for the government are entitled to the protections of absolute immunity. *Boyd v. Biggers*, 31 F.3d 279, 285 (5th Cir. 1994).

Plaintiffs' discrimination, equal protection, and due process claims against the Liberty County Defendants arise from the Defendants' alleged decisions not to file certain criminal charges. "The decision to file or not file criminal charges is protected by prosecutorial immunity." *Quinn*, 326 F. App'x at 292. Accordingly, the Liberty County Defendants are entitled to prosecutorial immunity from any of Plaintiffs' claims brought against them in their individual capacities under both federal and state law.

Plaintiffs fail to plead facts that defeat Eleventh Amendment immunity or absolute prosecutorial immunity, which warrants dismissal of their claims against the Liberty County Defendants. Accordingly, all of Plaintiffs' claims against the Liberty County Defendants should be dismissed.

IV. The Allegiance Defendants' Motion to Dismiss

Defendants Allegiance Mobile Health and Steve Smith (collectively, "the Allegiance Defendants") move to dismiss Plaintiffs' claims against them because (1) Plaintiffs' claims are barred by applicable statutes of limitation, (2) Plaintiffs fail to allege that the Allegiance Defendants are state actors, and (3) Plaintiffs have simply failed to state a plausible claim against them. Doc. No. 21 at 1–2. The undersigned finds that all of Plaintiffs' claims against the Allegiance Defendants are barred by the statute of limitations.

While Plaintiffs offer somewhat detailed factual allegations against the Allegiance Defendants regarding their response to the accident, the causes of action alleged are vague and conclusory. Doc. No. 18 at 25–26. The undersigned discerns several possible claims against the Allegiance Defendants: a vague claim for "discrimination," negligence, and violations of due process, equal protection, and the Fourth Amendment asserted pursuant to § 1983. *Id.* Specifically, Plaintiffs allege that "Allegiance Mobile Health Emergency Medical Service discriminated against Madelyn Quiroz and denied Madelyn Quiroz life, liberty and property in the pursuit of happiness and he also denied Madelyn Quiroz equal protection of the law." *Id.* at 25, ¶ 106. Additionally, Plaintiffs allege "Allegiance negligently trained and hired Defendant Smith, and the other EMS workers L.F. Johnothon, Elizabeth Alvarez, and Katelyn Grimes."[2] *Id.* at 26, ¶ 108. Finally, Plaintiffs allege that "[a]fter Madelyn was severely injured causing the delay and denial of her medical care in violation of her fourth amendment rights as well as constituting medical negligence." *Id.*, ¶ 110.

Under Texas law, the limitations period for a negligence action is two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a); *Ledford v. Keen*, 9 F.4th 335, 338 (5th Cir. 2021); *Schlumberger*

[2] The undersigned notes that L.F. Johnothon and Elizabeth Alvarez are not parties to this lawsuit and are not identified anywhere else in the operative complaint. *See generally* Doc. No. 18.

Tech. Corp. v. Pasko, 544 S.W.3d 830, 834 (Tex. 2018). Once a defendant's wrongful conduct causes a legal injury, "the injured party's claims based on that wrongful conduct accrue—and the limitations period begins to run—even if (1) the claimant does not yet know that a legal injury has occurred, (2) the claimant has not yet experienced, or does not yet know the full extent of, the legal injury, (3) the claimant does not yet know the specific cause of the injury or the party responsible for it, (4) the wrongful conduct later causes additional legal injuries, or (5) the claimant has not yet sustained or cannot yet ascertain any or all of the damages resulting from the legal injuries." *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 814 (Tex. 2021).

Regarding § 1983 claims, because no federal statute specifies a limitation period for § 1983 suits, federal law borrows the forum state's general personal injury limitation period. *Wallace v. Kato*, 549 U.S. 384, 387 (2007); *Heilman v. City of Beaumont*, 638 F. App'x 363, 366 (5th Cir. 2016). In Texas, that statute of limitations period is two years. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a); *see also Hitt v. Connell*, 301 F.3d 240, 246 (5th Cir. 2002). In addition to the limitations period, courts apply the forum state's tolling principles. *Walker v. Epps*, 550 F.3d 407, 415 (5th Cir. 2008). Texas applies equitable tolling sparingly, looking to whether a plaintiff has diligently pursued his or her rights; litigants cannot use the doctrine "to avoid the consequences of their own negligence." *Hand v. Stevens Transp., Inc. Emp. Benefit Plan*, 83 S.W.3d 286, 293 (Tex. App.—Dallas 2002, no pet.).

Negligence and § 1983 claims have the same two-year limitations period, so the undersigned will analyze these claims together. The undersigned finds that Plaintiffs' negligence and § 1983 claims against the Allegiance Defendants are barred by the applicable statutes of limitation. The accident that forms the basis of this lawsuit occurred on January 23, 2020. Doc. No. 18 at 4, ¶ 1. According to Plaintiffs, Madelyn Quiroz turned 18 on July 18, 2021. *Id.*

However, Plaintiffs did not file suit against the Allegiant Defendants until October 12, 2023, when they filed their *First Amended Complaint* (Doc. No. 4). The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Accordingly, Plaintiffs' negligence and § 1983 claims against the Allegiance Defendants are barred by the statute of limitations.

Despite the clear applicability of the statute of limitations, Plaintiffs "seek to plead any applicable tolling provisions against any defendant that might assert [sic]." Doc. No. 18 at 51, ¶ 237. Plaintiffs fail to demonstrate that the statute of limitations should be tolled. Under Texas law, there are two doctrines that may defer a claim's accrual date: (1) the discovery rule and (2) fraudulent concealment. *Valdez v. Hollenbeck*, 465 S.W.3d 217, 229 (Tex. 2015). The discovery rule is a "narrow exception to the legal injury rule that defers accrual of a cause of action until the plaintiff knew or, exercising reasonable diligence, should have known of the facts giving rise to the cause of action." *Marcus & Millichap Real Est. Inv. Servs. of Nevada, Inc. v. Triex Texas Holdings, LLC*, 659 S.W.3d 456, 461 (Tex. 2023) (internal quotations omitted). The discovery rule applies "when the injury is by its nature inherently undiscoverable," which means "unlikely to be discovered within the prescribed limitations period despite due diligence." *Id.* Plaintiffs fail to allege any facts in their *Corrected Second Amended Complaint* (Doc. No. 18) showing that Madelyn Quiroz's injuries were inherently undiscoverable. Accordingly, the discovery rule is inapplicable here.

Under the doctrine of fraudulent concealment, "when a defendant has fraudulently concealed the facts forming the basis of the plaintiff's claim, limitations does not begin to run until the [plaintiff], using reasonable diligence, discovered or should have discovered the injury." *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 817 (Tex. 2021).

Plaintiffs fail to allege any facts showing that the Allegiance Defendants fraudulently concealed facts related to Madelyn Quiroz's injuries. Accordingly, fraudulent concealment is also inapplicable here.

In their *Response*, Plaintiffs contend that their claims against the Allegiance Defendants relate back to the original *Complaint* (Doc. No. 1) under TEX. CIV. PRAC. & REM. CODE § 16.068, and therefore, are not barred by the statute of limitations. Doc. No. 27 at 8–10. Specifically, Plaintiffs contend that the doctrines of misnomer and misidentification apply and toll the statute of limitations because "Plaintiff was not aware it was Allegiance, not City of Dayton, who was responsible for the emergency medical services." *Id.* at 10. The Allegiance Defendants are entirely new parties named in Plaintiffs' *First Amended Complaint* (Doc. No. 4) that were not named in their original *Complaint* (Doc. No. 1). The City of Dayton, who Plaintiffs contend is the misidentified/misnamed party, was a defendant in the original *Complaint* (Doc. No. 1) and is *still* a defendant in the *First Amended Complaint* (Doc. No. 4). As explained below, the undersigned finds that neither misidentification nor misnomer apply here, and Plaintiffs' claims against the Allegiance Defendants do not relate back to the claims in their original *Complaint* (Doc. No. 1).

Whether an amended pleading in federal court relates back to a prior pleading is a procedural question that invokes FED. R. CIV. P. 15(c). *Taylor v. Trevino*, 569 F. Supp. 3d 414, 430 (N.D. Tex. 2021). Rule 15(c)(1)(A) provides that "[a]n amendment to a pleading relates back to the date of the original pleading when . . . the law that provides the applicable statute of limitations allows relation back." FED. R. CIV. P. 15(c)(1)(A). Here, Texas law provides the applicable statutes of limitation for negligence and § 1983 claims. Accordingly, the court must examine the relation back statute under Texas law, which provides that:

> [i]f a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a

> subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence.

TEX. CIV. PRAC. & REM. CODE § 16.068.

The Fifth Circuit has construed Rule 15(c)(1)(A) to mean that a court should consider both Rule 15(c) and § 16.068, and "whichever is more forgiving and works to save the claim is the one that controls." *Taylor*, 569 F. Supp. 3d at 431 (citing *Schirle v. Sokudo USA, L.L.C.*, 484 F. App'x 893, 901–02 (5th Cir. 2012) (per curiam)).

Turning first to § 16.068, "[o]rdinarily, an amended pleading adding a new party does not relate back to the original pleading." *Univ. of Tex. Health Sci. Ctr. at San Antonio v. Bailey*, 332 S.W.3d 395, 400 (Tex. 2011); *Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 121 (Tex. 2004). In certain circumstances, a pleading involving misnomer or misidentification can relate back. Misidentification "arises when two separate legal entities exist and a plaintiff mistakenly sues an entity with a name similar to that of the correct entity." *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2009). However, "[e]quitable tolling may be available in a misidentification case only if there are two separate, but related, entities that use a similar trade name and the correct entity had notice of the suit and was not misled or disadvantaged by the mistake." *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 670 S.W.3d 622, 628 n.3 (Tex. 2023). That is not the case here. The Allegiance Defendants and the City of Dayton do not have similar names, and Plaintiffs have not shown that the Allegiance Defendants had notice of this suit when the original *Complaint* (Doc. No. 1) was filed. Accordingly, the misidentification doctrine does not apply and the statute of limitations cannot be tolled on this basis.

Additionally, "[a] misnomer occurs when a party misnames itself or another party, but the correct parties are involved." *Houston Orthopaedic*, 295 S.W.3d at 325. That is not the case here

either. Allegiance Mobile Health, a private emergency medical transport company, is a wholly distinct entity from the City of Dayton, a municipality, and was never involved in this case prior to the filing of the *First Amended Complaint* (Doc. No. 4). Accordingly, misnomer does not apply and the statute of limitations cannot be tolled on this basis.

Turning to FED. R. CIV. P. 15(c), Plaintiffs cannot establish that the statute of limitations should be tolled under the Federal Rules of Civil Procedure either. "Rule 15(c) is meant to allow an amendment changing the name of a party to relate back to the original complaint *only if the change is the result of an error, such as a misnomer or misidentification.*" *Ultraflo Corp. v. Pelican Tank Parts, Inc.*, 926 F. Supp. 2d 935, 947 (S.D. Tex. 2013) (citing *Miller v. Mancuso*, 388 F. App'x. 389, 391 (5th Cir. 2010)) (emphasis in original). As discussed above, Plaintiffs have not established either a misnomer or misidentification of the Allegiance Defendants. Rather, Plaintiffs simply allege that "Plaintiff was not aware it was Allegiance, not City of Dayton, who was responsible for the emergency medical services." Doc. No. 27 at 9–10. This is not enough to establish a misidentification or misnomer sufficient to invoke the relation back doctrine. *See Ultraflo*, 926 F. Supp. 2d at 947 (stating that "[a] failure to name the correct defendant due to a lack of knowledge of the proper party is not a mistake and will not allow a plaintiff to avail itself of the relation back doctrine").

The undersigned concludes that Plaintiffs' negligence claims and constitutional claims asserted against the Allegiance Defendants under § 1983 are time barred by the applicable statutes of limitations. Accordingly, all such claims against the Allegiance Defendants should be dismissed.

Finally, regarding Plaintiffs' conclusory assertion of a "discrimination" claim, this claim should be dismissed because Plaintiff fails to state a claim upon which relief can be granted. To

survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678. Plaintiffs state no facts at all showing that the Allegiance Defendants discriminated against her and fail to allege any specific cause of action for discrimination. "Conclusory allegations, unwarranted factual inferences, or legal conclusions are not accepted as true." *Allen*, 65 F.4th at 743. Accordingly, any "discrimination" claim against the Allegiance Defendants should be dismissed.

In sum, the undersigned recommends granting the Allegiance Defendants' instant *Motion to Dismiss* (Doc. No. 21).

V. Defendants City of Liberty, Texas and Katelyn Grimes' Motion to Dismiss

Defendants City of Liberty, Texas and its official Katelyn Grimes (collectively, "the Liberty Defendants") move to dismiss Plaintiffs' claims against them because Plaintiffs' claims (1) are barred by applicable statutes of limitation, (2) Plaintiffs fail to plead causes of action in support of their § 1983 claims, and (3) the Liberty Defendants are entitled to qualified immunity from suit. Doc. No. 23 at 3–4. As a threshold matter, the undersigned finds that Plaintiffs have abandoned all claims against the City of Liberty itself. Though the City of Liberty is named in the caption of the *Corrected Second Amended Complaint*, there are no cognizable causes of action pleaded against the city anywhere in the operative complaint. *See generally* Doc. No. 18. Accordingly, the Liberty Defendants' instant motion should be granted with respect to the City of Liberty on this basis.

As is par for the course with Plaintiffs' operative complaint, the allegations against Defendant Grimes are extremely sparse and conclusory. Plaintiffs allege that Defendant Grimes "discriminated against Madelyn Quiroz and denied Madelyn Quiroz life, liberty, and property in the pursuit of happiness and [she] also denied Madelyn Quiroz equal protection of the law." Doc.

No. 18 at 24–25, ¶ 101. From this, the undersigned discerns a vague "discrimination" claim and violations of Madelyn Quiroz's due process and equal protection rights pursuant to § 1983.

The undersigned finds that all of Plaintiffs' § 1983 claims against Defendant Grimes are barred by the statute of limitations. As discussed above, the statute of limitations for § 1983 claims in Texas is two years. *See Hitt*, 301 F.3d at 246; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). Plaintiffs did not file suit against Defendant Grimes until October 12, 2023 when they filed their *First Amended Complaint*. Doc. No. 4 at 28, ¶ 97. Defendant Grimes' name appears nowhere in the original *Complaint*. *See generally* Doc. No. 1. The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Thus, Plaintiffs' § 1983 claims against Defendant Grimes are barred by the statute of limitations.

In their *Response*, Plaintiffs contend, in conclusory fashion, that the claims against Defendant Grimes in the operative complaint relate back to the original complaint. Doc. No. 27 at 13. Plaintiffs allege no facts, other than this conclusory assertion, that the claims against Grimes relate back to the original *Complaint* (Doc. No. 1). Accordingly, this argument is without merit.

Regarding any possible discrimination claim, this claim fails for the same reasons Plaintiffs' discrimination claim against the Allegiance Defendants fails: Plaintiffs state no facts at all showing that the Liberty Defendants discriminated against her and fail to allege any specific cause of action for discrimination. Plaintiffs fail to "state a claim to relief [for discrimination] that is plausible on its face." *Iqbal*, 556 U.S. at 678. Accordingly, any "discrimination" claim against the Allegiance Defendants should be dismissed. In sum, the undersigned recommends granting the Liberty Defendants' instant motion to dismiss (Doc. No. 23).

VI. City of Dayton Defendants' Motion to Dismiss

Defendants City of Dayton, The City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, and Murphy Green (collectively, "the Dayton Defendants") move to dismiss Plaintiffs' claims against them for several reasons. Doc. No. 24 at 2–3. First, they contend that the claims against the City of Dayton Fire Department, Caroline Wadzeck, Kristen Seibert, and Murphy Green are barred by applicable statutes of limitation. *Id.* at 7. Second, they contend that the City of Dayton Fire Department should be dismissed because it is not a proper jural defendant. *Id.* at 8. Third, they contend that the claims against Defendants Wadzeck, Melancon, Vine, Coleman, Hughes, Seibert, and Green are duplicative of the claims against the City of Dayton, which warrants dismissal. *Id.* at 9. Finally, they contend that Plaintiffs fail to sufficiently plead facts supporting a *Monell* liability claim against Defendant City of Dayton. *Id.* at 9–10. The undersigned will consider each contention in turn.

A. Statutes of Limitation

The undersigned discerns equal protection and due process claims asserted against Defendants City of Dayton Fire Department, Wadzeck, Seibert, and Green pursuant to § 1983. Doc. No. 18 at ¶¶ 14, 47, 51. Thus, the statute of limitation rules for § 1983 claims discussed above apply to these claims.

The undersigned finds that the limitations period under Texas law bars Plaintiffs' § 1983 claims against Defendants City of Dayton Fire Department, Wadzeck, and Green. Under Texas law, the statute of limitations for § 1983 claims is two years. *See Hitt*, 301 F.3d at 246; TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). Plaintiffs did not file suit against Defendants City of Dayton Fire Department, Wadzeck, and Green until October 12, 2023, when they filed their *First*

Amended Complaint. Doc. No. 4 at 28, ¶ 97. The *First Amended Complaint* was filed more than three years after the accident and more than two years after Madelyn Quiroz turned 18. Accordingly, Plaintiffs' § 1983 claims against Defendants City of Dayton Fire Department, Wadzeck, and Green are barred by the statute of limitations.

The undersigned notes that Plaintiffs named Defendant Seibert as a defendant in their *First Amended Complaint*. Doc. No. 4 at 16–17. Despite the vague pleading of allegations against Defendant Seibert, the undersigned is reluctant to dismiss the claims against her on statute of limitations grounds because the *First Amended Complaint* complies with the relevant statute of limitations. Thus, the undersigned will consider the claims against Defendant Seibert in conjunction with the other official capacity claims asserted against the Dayton Defendants in sub-section VI.C.

In sum, the undersigned finds that all of Plaintiffs' claims against Defendants City of Dayton Fire Department, Wadzeck, and Green are barred by the statute of limitations, and accordingly, all such claims should be dismissed.

B. Non-Jural Entity

Though the statute of limitations bars Plaintiffs' claims against the City of Dayton Fire Department, Plaintiffs' claims should also be dismissed because the City of Dayton Fire Department is a non-jural entity that is incapable of being sued. To sue a city department in Texas, the department "must enjoy a separate legal existence," which means that it must be "a separate and distinct corporate entity." *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991) (internal citations omitted). Thus, unless the "true political entity" has explicitly granted "the servient agency with jural authority," the servient agency may not sue nor be sued. *Id.* Plaintiffs fail to allege any facts demonstrating that the City of Dayton has granted the City of Dayton Fire

Department jural authority as a separate entity. Accordingly, any claims Plaintiffs have against the City of Dayton Fire Department should be dismissed on this basis as well. *See*, *e.g.*, *Hughes v. City of Schertz*, 2007 WL 3128511, at *1–2 (W.D. Tex. Sept. 28, 2007) (dismissing a city's fire department that was sued together with the city, which did not explicitly grant jural authority to the fire department).

C. Redundant Claims

The undersigned discerns vague and conclusory discrimination, equal protection, and due process claims asserted against Defendants Seibert, Melancon, Vine, Coleman, and Hughes, all of whom are sued in their official capacities. Doc. No. 18 at ⁋⁋ 17, 21, 32, 39, 47. "[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent." *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)) (internal quotations omitted). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Graham*, 473 U.S. at 166. "It is *not* a suit against the official personally, for the real party in interest is the entity." *Id.* (emphasis in original).

Because all these defendants are City of Dayton officials sued in their official capacities and the City of Dayton is a co-defendant, all claims against these defendants should be dismissed as redundant of Plaintiffs' claims against the City of Dayton. *See*, *e.g.*, *Marceaux v. Lafayette City-Par. Consol. Gov't*, 614 F. App'x 705, 708 (5th Cir. 2015) (affirming dismissal of official capacity claims against municipal officers when the municipality was also a defendant); *Chavez v. Alvarado*, 550 F. Supp. 3d 439, 450 (S.D. Tex. 2021) (dismissing claims against individual police officers in their official capacities as redundant of plaintiffs' claims against the City of Houston).

Accordingly, Plaintiffs' claims against Defendants Seibert, Melancon, Vine, Coleman, and Hughes should be dismissed.

D. *Monell* Liability

Finally, the undersigned turns to Plaintiffs' *Monell* liability claims against Defendant City of Dayton. Plaintiffs assert a variety of vague allegations against the City of Dayton in their *Second Corrected Amended Complaint*, including that the City of Dayton was untruthful to the Attorney General of Texas' office, denied proper hold of the wrecked car, failed to conduct a preliminary scene investigation, failed to procure medical records, failed to recognize the seriousness of the injuries resulting from the crash, failed to collect statements from witnesses after the accident, and intentionally suppressed a criminal investigation into Morgan White, among others. Doc. No. 18 at 4, ¶¶ 4–12. The City of Dayton moves to dismiss Plaintiffs' claims because Plaintiffs fail to state any allegations that an official city policy or custom was the moving force behind any alleged violation of Plaintiffs' constitutional rights. Doc. No. 24 at 10.

42 U.S.C. § 1983 "makes liable '[e]very person' who, under color of state law, violates federal constitutional rights." *Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 622 (5th Cir. 2018). To assert a *Monell* liability claim under 42 U.S.C. § 1983 against the City of Dayton, Plaintiffs must allege three elements: (1) a policymaker; (2) an official policy; and (3) a violation of a constitutional right whose "moving force" is the policy or custom. *Alvarez v. City of Brownsville*, 904 F.3d 382, 389 (5th Cir. 2018); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978).

There are three ways to establish a "policy" under *Monell*:

> First, a plaintiff can show written policy statements, ordinances, or regulations.[] Second, a plaintiff can show a widespread practice that is so common and well-settled as to constitute custom that fairly represents municipal policy.[] Third, even a single decision may constitute municipal policy . . . when the official or entity

> possessing final policymaking authority for an action performs the specific act that forms the basis of the § 1983 claim.[]

Webb v. Town of Saint Joseph, 925 F.3d 209, 215 (5th Cir. 2019) (internal footnotes, citations, and quotation marks omitted).

Plaintiffs fail to allege any facts showing (1) the existence of written policy statements, ordinances, or regulations, (2) a widespread practice, or (3) a single decision by an official that possesses final policymaking authority sufficient to establish a "policy" for *Monell* liability purposes. Moreover, even if Plaintiffs' vague, conclusory allegations somehow established the existence of a policy, they have alleged no facts showing that such a policy was the moving force behind a violation of any of their constitutional rights. Accordingly, because Plaintiffs fail to plead facts establishing these essential elements of their *Monell* claims, their claims against the City of Dayton fail to state a claim for *Monell* liability and should be dismissed.

In sum, the undersigned recommends granting the Dayton Defendants' instant *Motion to Dismiss* (Doc. No. 24).

VII. Claims Against Non-Responding Defendants

Additionally, Plaintiffs assert vague, conclusory allegations against the Ramji Law Group and Adam Ramji, Jamey Wayne Bice, Stephanie Lee Blum Bice, Morgan White, and Union Pacific Railroad Company in their *Corrected Second Amended Complaint*. Doc. No. 18. None of these defendants have answered or otherwise responded. However, where a defending party establishes that the plaintiff has no cause of action, the same defense generally inures to the benefit of a defaulting defendant. *See Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir. 2001); *Young v. Isola, Mississippi, By & Through Miller*, 708 F. App'x 152, 155 (5th Cir. 2017); *McCarty v. Zapata County*, 243 F. App'x 792, 794 (5th Cir. 2007); *Lopez v. Cain*, No. 6:22-CV-00148-JDK, 2023 WL

7030184, at *8 (E.D. Tex. Sept. 19, 2023), *report and recommendation adopted*, No. 6:22-CV-148-JDK-JDL, 2023 WL 7027505 (E.D. Tex. Oct. 25, 2023).

Plaintiffs fail to plead sufficient facts to establish a cognizable cause of action against any of these defendants. Defendants Ramji Law Group and Adam Ramji are simply named in the caption of the complaint and Plaintiffs do not allege a single cause of action against them, nor even mention them anywhere else in the operative complaint. Doc. No. 18 at 1. Thus, Plaintiffs fail to allege any claim upon which relief can be granted, and accordingly, all of Plaintiffs' claims against these defendants should be dismissed. Regarding Defendant Morgan Skye White, while Plaintiffs discuss White extensively throughout the operative complaint, they fail to actually allege any cognizable causes of action against her. Accordingly, all of Plaintiffs' claims against Defendant White should be dismissed.

Regarding Defendants Jamey Wayne Bice and Stephanie Lee Blum Bice, Plaintiffs vaguely allege, in conclusory fashion, that these defendants obstructed justice and interfered with a criminal investigation. Doc. No. 18 at 28, ¶¶ 120–25. These allegations do not sufficiently state a cognizable claim upon which relief can be granted. Accordingly, all of Plaintiffs' claims against these defendants should be dismissed. Finally, Plaintiffs allege the same vague constitutional claims under § 1983 against Defendant Union Pacific Railroad as they did against the Dayton Defendants, namely that Union Pacific violated Madelyn Quiroz's due process and equal protection rights. Doc. No. 18 at 31. Plaintiffs have alleged no facts showing that Union Pacific was a state actor, and thus, Plaintiffs cannot establish any of their § 1983 claims against it. *See Yeager v. City of McGregor*, 980 F.2d 337, 338 (5th Cir. 1993) (noting that "[w]here there is no state action, no section 1983 constitutional claim exists"). Accordingly, all of Plaintiffs' claims against Union Pacific should be dismissed.

VIII. Remaining State Law Claims

The only Defendant not yet addressed in this Report is Defendant Eduardo Hernandez. Plaintiffs allege only a state law negligence claim against Defendant Hernandez. Doc. No. 18 at 45, ¶¶ 219–31. Because the undersigned recommends dismissal of all of Plaintiffs' federal claims, no federal question remains before the court. However, the court is not divested of jurisdiction based on this alone—the court must exercise its discretion whether to exercise supplemental jurisdiction over Taylor's state law claims under the Texas Constitution. *See* 28 U.S.C. § 1367(c)(3) (stating that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . (3) the district court has dismissed all claims over which it has original jurisdiction"). When a court dismisses all federal claims prior to trial, the general rule is to dismiss any pendent state law claims. *Watson v. City of Allen, Texas*, 821 F.3d 634, 642 (5th Cir. 2016). However, the dismissal of pendent claims should be without prejudice so that Plaintiffs may refile their claims against Defendant Hernandez in the appropriate state court. *Univ. of Texas Sys. v. Alliantgroup LP*, 400 F. Supp. 3d 610, 619 (S.D. Tex. 2019) (citing *Bass v. Parkwood Hosp.*, 180 F.3d 234, 246 (5th Cir. 1999)). Accordingly, all of Plaintiffs' claims against Defendant Hernandez should be dismissed without prejudice.

IX. Conclusion

The undersigned concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Jennifer Bergman Harkness, Matthew Poston, and Matthew Saldana. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 20) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Allegiance Mobile Health and Steve Smith.

Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 21) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants the City of Liberty, Texas and its official Katelyn Grimes. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 23) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants City of Dayton, The City of Dayton Fire Department, Caroline Wadzeck, Theo Melancon, Robert Vine, John D. Coleman, Terri Hughes, Kristen Seibert, and Murphy Green. Accordingly, these defendants' *Motion to Dismiss Plaintiffs' Second Corrected Amended Complaint* (Doc. No. 24) should be **GRANTED.**

The undersigned further concludes that Plaintiffs fail to allege sufficient facts to establish any viable cause of action against Defendants Ramji Law Group and Adam Ramji, Morgan Skye White, Jamey Wayne Bice, Stephanie Lee Blum Bice, and Union Pacific Railroad Company. Accordingly, any claims against these defendants should be **DISMISSED.**

Finally, the undersigned recommends that Plaintiffs' state law claims against Defendant Eduardo Hernandez should be **DISMISSED WITHOUT PREJUDICE.**

X. Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within 14 days after being served with a copy of this Report, and (4) be no more than eight (8) pages in length. *See* 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. TEX.

CIV. R. CV-72(c). A party who objects to this Report is entitled to a *de novo* determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within 14 days of being served with a copy of this Report, bars that party from: (1) entitlement to *de novo* review by the United States District Judge of the findings of fact and conclusions of law, and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District Judge. *See Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED this 30th day of July, 2024.

Zack Hawthorn
United States Magistrate Judge

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1 (Due Process and Equal Protection Clauses)

U.S. Const. art. III, § 2 (Case or Controversy Requirement)

42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)

Fed. R. Civ. P. 12(b)(6) (Failure to State a Claim)

Fed. R. Civ. P. 15(a) and (c) (Amendment and Relation Back)

Tex. Civ. Prac. & Rem. Code § 16.001 (Tolling provisions)

Tex. Civ. Prac. & Rem. Code § 16.003 (Two-Year Limitations Period)